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Lobbyist Registration

Research Study

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In response to a request from the Legislature, Alberta Government Services undertook to review the need for a lobbyist registry in Alberta. To complete this review a study of existing lobbyist registration legislation across Canada was carried out. Published information, in particular that concerning the performance of lobbyist registration systems, was gathered and analysed to provide:

- a summary of the issues and reasons that led to the development of legislation in other Canadian jurisdictions,
- an assessment of whether the legislation in each jurisdiction has achieved its desired effect, and
- an estimate of start-up and operating costs if a Lobbyist Registry is established in Alberta.

The study results showed that Canada has two lobbyist registration systems in operation now. The federal government developed the first such system in 1986. The second system was developed by the Province of Ontario and became operational in 1999. In addition, the Provinces of British Columbia and Nova Scotia have recently announced the introduction of lobbyist registry legislation.

The study also found that there had been several previous attempts in Canada to introduce lobbyist registry systems. Key issues driving these attempts included reaction to scandals, migration of public office holders to the private sector, and situations where public trust in governments of the day had declined to a low level. The reasons for introduction of lobbyist registration legislation were found to include efforts to reestablish public trust in government, improvements to government integrity and accountability, and contributions to transparency goals.

Analysis suggests that the critical factor in the successful introduction of lobbyist registry legislation was the lack to trust in governments of the day. Further, it was found that development of the legislation followed a change in government.

In terms of assessed performance, only the federal system has been subject to critical review, this by a House of Commons Standing Committee. No review of the Ontario system has been carried out because the system is in its infancy. The British Columbia and Nova Scotia registries are in the developmental stage. Consequently, the Standing Committee review report is the only definitive document upon which an assessment of the effectiveness of Canadian lobbyist registration legislation can be based.

The Standing Committee report was critical of the operation of the registry, the role of the federal Ethics Counsellor, enforcement issues and compliance. In fact, despite a few well-documented cases no one has yet been prosecuted using this legislation and the Standing Committee, itself, has recommended that the enforcement provisions of the Act be strengthened. Despite these criticisms, the conclusion of the Standing Committee report is that the federal legislation has generally met its goals and objectives.

The Bloc Québécois, while recognizing some report recommendations as "promising" presented a dissenting opinion to the Standing Committee stating that the Liberal majority's report "is much too timid when it comes to regulating lobbyists' activities," and that "it says nothing about certain important aspects of the Ethics Counsellor's work."

Critics cited in the media are more direct in their criticism citing weakness in the federal legislation, the absence of convictions despite three incidents of unregistered lobbying, and the possibility of widespread non-compliance by lobbyists from the not-for-profit sector. In addition, although past weaknesses in the federal legislation have been corrected, the present strength of this legislation must be considered to be untested. Based on the opinion of a Quebec Crown Prosecutor, the media suggest that the wording of the Act is too vague and that in some cases convictions would likely not be forthcoming despite strong evidence of alleged wrongdoing.

The cost to set up and administer an equivalent Lobbyist Registration Act in Alberta has been estimated. Start up costs, using the commercially available software developed for Ontario, would be in the order of $115,000 to $150,000, not including manpower costs associated with system modifications and registry development. Once operational, the annual operating costs, including manpower, were estimated to be between $150,000 and $200,000, depending upon the scope and complexity of the system adopted excluding any potential enforcement costs. Emerging issues were identified. These concerned the impact of the Internet and new types of lobbyist that are emerging within Canadian society.

While the findings of this study indicate that the existing federal and Ontario lobbyist registries provide some tangible benefits to government and industry, the study found that application of existing Canadian legislation as it is written today would not address the challenges presented by these new forms of lobbying and lobbyists that are rapidly emerging within society. Further, the study found that the efficacy of these models is insufficient to meet the future needs of Albertans without further modification and improvement.

Consequently, it is recommended that Government Services not entertain the notion of development of this form of lobbyist regulation at this time.

Lobbyist Registration

Research Study

Table of Contents

1.0 Introduction 1

2.0 Call for Lobbyist Registry Legislation in Alberta 1

2.1 Commitment to a Review 1

2.2 Requirements 1

3.0 Findings 1

3.1 Lobbyist Registration Legislation in Canada 1

3.2 Definitions 2

3.3 Scope and Cost of Existing Legislation 3

3.4 Bureaucratic Burden 4

4.0 Analysis 4

4.1 Issues Driving the Development of Legislation 4

4.2 Reasons for the Introduction of Existing Legislation 5

4.3 Assessed Performance - Federal 6

4.4 Assessed Performance - Province of Ontario 7

5.0 Establishing Lobbyist Registration Legislation in Alberta 7

5.1 Alberta Set-up Costs 7

5.2 Definitions 8

5.3 Transparency Goals and Objectives 8

5.4 New Forms of Lobbyist 8

6.0 Findings of this Study 9

6.1 General Conclusion 9

6.2 Need For Legislation 9

6.3 Definition of Lobbyist 9

6.4 Responsibility for the Legislation 9

6.5 Compliance and Enforcement 9

6.6 Lobbying by Electronic Means 10

7.0 Recommendation 10

8.0 Appendix 1: Annual Report for the Lobbyists Registration Act of Canada

9.0 Appendix 2: Annual Report of the Lobbyist Registration Act of Ontario

10.0 Appendix 3: The Tupper Report: Integrity in Government in Alberta: Towards the Twenty First Century, January 1996

11.0 Appendix 4: Report, Standing Committee on Industry, Science & Technology

Two jurisdictions in Canada have implemented lobbyist registration systems after incidents where lobbyists had been shown, or had been perceived to, unduly influence government policy. The prime purpose of this type of legislation is to aid in the development and maintenance of public trust in the business dealings of government. These goals are achieved through improved public access to information and increased government transparency.

Such legislation generally requires lobbyists to disclose their lobbying efforts in such a way that the public can easily learn the identities of people and corporations trying to influence decisions by politicians and bureaucrats. Individuals within government offices of ethics or integrity tend to administer the legislation. At the federal level in Canada the RCMP enforce the legislation.

2.1 Commitment to a Review

In response to a request from the Legislature, Alberta Government Services undertook to review the need to establish an Alberta lobbyist registry. Several key issues provide the focus for this review. These issues include:

- legislation planned and under way in other provinces,
- the definition of a lobbyist,
- the costs associated with setting up existing Lobbyist Registries,
- the size of the bureaucracy required to administer the registry, and
- recommendations for Alberta Government Services.

2.2 Requirements

The review was required to analyse the research findings, as necessary or required, to provide:

- a summary of the issues and reasons that led to the development of legislation in the jurisdictions studied,
- an assessment of whether the legislation in each jurisdiction has achieved its desired effect, and
- an estimate of start-up and operating costs if a Lobbyist Registry is established in Alberta.

3.1 Lobbyist Registration Legislation in Canada

The study found there had been several attempts to introduce lobbyist registry systems at the provincial and federal levels, some ranging back in time to the 1960s.

Notwithstanding these initiatives, lobbyist registration legislation has been enacted in two jurisdictions, federally and in the Province of Ontario. The current federal legislation is the *"Lobbyists Registration Act, R.S., 1985, c. 44 (4th Supp.),* that was assented to on the 13th September, 1988 and amended by *C.C. 1995, c.12."* In Ontario, the current legislation is *"The Lobbyists Registration Act, S.O.1998, c.27,"* that was proclaimed on January 15, 1999. Annual Reports for these Acts are attached. (See Appendices 1 and 2.)

In Alberta, lobbyist registration was a recommendation of the 1996 Report of the Conflicts of Interest Act Review Panel chaired by Dr. Allan Tupper. This report was entitled, *"Integrity in Government in Alberta: Towards the Twenty First Century."* (See Appendix 3.)

3.2 Definitions

The definition of lobbyists is complex and may vary, jurisdiction by jurisdiction. In addition, the definition of lobbyist is closely coupled with the definition of "lobbying" and that of "public office holder." For the purposes of legislative design, these definitions cannot easily be treated separately and are best developed in consideration of each other.

1. Lobbyists

Lobbyists are broadly defined as individuals who are paid to communicate with public office holders in an attempt to influence specific types of government decisions. Paid lobbyists are categorized in existing Canadian legislation, as follows:

- **Consultant Lobbyists**

These lobbyists are retained for a fee to communicate with public office holders. Such lobbyists may be government relations consultants, lawyers, and accountants.

- **Ontario: In-house Lobbyist (Persons and Partnerships)/Federal Government: Lobbyist (Corporate)**

These lobbyists are individuals, employed by a person or corporation/ partnership, who carry on commercial activities for financial gain and who lobby as a significant part of their duties.

- **In-house Lobbyist (Organizations)**

These lobbyists are individuals who are employed by non-profit organizations such as Chambers of Commerce, Trade Unions, charitable organizations, and other similar organizations, and who lobby as a significant part of their duties.

2. Lobbying

Lobbying may generally be defined as a communication between a paid lobbyist and a public office holder in an attempt to influence government decisions concerning matters such as:

- proposed legislation,
- changes to programs, policies, and decisions,
- the awarding of grants, contributions, and other financial benefits,
- privatizing and outsourcing of government activities, and
- sale of government-owned assets.

Activities that may be excluded include oral and written submissions to:

- legislative committees,
- public office holders with respect to enforcement, interpretation, or application of any act, policy, program, or guideline,
- responses to written requests for advice and comment, and
- routine constituency communications between elected members of the legislature and constituents.

3. Public Office Holders

In all jurisdictions, Public Office Holders must be defined with care. Chosen office holders may include cabinet ministers, members of the legislative assembly, defined public servants, persons appointed to office by Order-in-Council, members of police forces, and officers, directors and employees of provincial government ministries and agencies, boards and commissions. For clarity, it is important to also define those persons excluded from the definition such as legislative officers, judges, and justices of the peace.

3.3 Scope and Cost of Existing Legislation

Scope of Legislation

The federal and Ontario Lobbyists Registration Acts apply to individuals who are paid to communicate with federal and Government of Ontario public office holders in attempts to influence government decisions. Only those lobbyists who lobby as a *significant* part of their duties are subject to the requirements of the legislation. In not-for-profit organizations the senior paid officer must register when one or more employees lobby on behalf of the organization and the accumulated lobbying activity of all employees would constitute a significant part of the duties of one employee.

In Ontario, an interpretation of "a significant part of duties" has been provided. In this ruling a significant part of an In House Lobbyists, (Persons and Partnerships) time, has been determined to have occurred when the accumulated lobbying activity undertaken by a lobbyist, over a three month period, reaches the threshold of 20% of that person's time. In the case of In House Lobbyists, (Organizations), this limit is reached when the accumulation of lobbying activities, over a three month period, reaches the 20% threshold for either an individual employee's time or the combined times of more than one employee.

The federal Act applies to virtually all persons elected or appointed in the federal government including members of the House of Commons and the Senate and their staff, officers and employees of federal departments and agencies, members of the Canadian Armed Forces, and the Royal Canadian Mounted Police. The Ontario Act is similarly applied to persons elected to or appointed by the provincial government.

Registration and Reporting

Both existing Acts contain requirements for registration and reporting. Lobbyists may register and report to both registration systems either manually or electronically through websites. Statistics reported in both 2000/01 annual reports show that the preferred method in both registries is the free electronic registration option with approximately 98% use rate by lobbyists.

Lobbyists active as of March 31, 2001	Federal Government	Ontario
Consultant Lobbyists	702	188
In-house Lobbyists (Corporate)/(Persons and Partnerships)	335	78
In-house Lobbyists (Organizations)	370	95
Note: No operational statistics are available for B.C. and Nova Scotia as these lobbyist registries are in the implementation stage.		

Table 1. Lobbyists Active as of March 31, 2001

Areas of Interest
Lobbyists are required to disclose their areas of interest. The five areas of interest most frequently identified by lobbyists as of March 31, 2000 are shown in Table 2 in descending order of interest.

Federal (Governments and Agencies)	Ontario (Government Ministries and Agencies)	Ontario (Subject Matter)
Industry Canada Finance Canada Foreign Affairs and International Trade Revenue Canada Environment Canada	Office of The Premier and Cabinet Office Minister of Finance Members of Provincial Parliaments Minister of Health Minister of Economic Development and Trade	Economic Development and Trade Health Taxation and Finance Environment Industry
Note: No operational statistics are available for B.C. and Nova Scotia as these lobbyist registries are in the implementation stage.		

Table 2: Areas of Interest

Annual Operating Costs

Registry	1999/00	2000/01	2001/02 (Estimated)	Notes
Federal	$174,700	$329, 900	$214,300	Computer system upgrade in 2000/01
Ontario	N/A	N/A		N/A
Note: No financial statistics are available for B.C. and Nova Scotia as these lobbyist registries are in the implementation stage.				

Table 3: Annual Operating Costs

3.4 Bureaucratic Burden

Both the federal and Ontario lobbyist registries are administered by two full time staff equivalents. This does not include enforcement costs.

4.1 Issues Driving the Development of Legislation

Several issues have been identified as driving forces in the development of lobbyist registration legislation and associated activities:

1. Reaction to Incidents

At the federal level, from the 1960s to the mid 1980s there were incidents that resulted in intermittent attempts to introduce legislation regulating the activities of professional lobbyists. These attempts were either sponsored by governments of the day or were made through the introduction of private members' bills.

Due to the passage of time, remaining information on individual initiatives is limited. In some cases, there is now no longer anyone to refer to or the information provided is anecdotal. Consequently, opinions regarding specific driving issues or the reasons for failure to develop legislation cannot be drawn with confidence.

The outcome, however, remains clear. Whatever the driving forces were, they were at a level or frequency that was insufficient to provide adequate support for the introduction of lobbyist legislation by the federal government of the day.

2. Reduced Trust in Government

In 1982/83 and again in 1985/86, at the federal level, and at other times in Ontario, repeated incidents involving lobbyists severely reduced the level of public trust in the commercial dealings of those governments. In both jurisdictions, following an election, the incoming government developed a Lobbyist Registration Act.

In hindsight, the federal 1989 Act was minimal in scope and was not effective in preventing incidents such as those associated with the 1988 "Airbus Affair" and the 1993 attempt to privatize Toronto Pearson International Airport. These events raised further questions regarding the influence that lobbyists may have had over the governments of the day. These questions were at a level and severity that again reduced public trust to the point where the matter became a key issue in the federal election of 1993. Consequently, the federal Act was then strengthened by amendments introduced by the incoming government.

3. Move of Public Office Holders to the Private Sector

The move of public office holders to counterpart positions in the private sector is an area of perpetual concern since these moves are potentially open to abuse. In Ontario, in the early 1990s, abnormally high numbers of public office holders migrated to the private sector as the result of downsizing by the provincial government. These moves were on such a scale as to exacerbate the situation and to raise concerns to critical levels.

4.2 Reasons for the Introduction of Existing Legislation

1. Reestablishment of Trust

Twice at the federal level and once in Ontario, incidents involving lobbyists and preceding governments had substantially reduced public trust in government to the point where public and political support for corrective activity could be sustained by the governments of the day. In all three cases, the introduction of lobbyist registration legislation, or modification of existing legislation, was a key component of the corrective strategy adopted in an effort to improve public trust in government.

2. Improved Government Integrity and Accountability

The incidents involving lobbyists were seen to have hurt the integrity of the federal and Ontario governments. In order to restore public confidence these governments closely coupled other initiatives to the introduction of lobbyists registration legislation.

These initiatives included:

- **Appointment of a Federal Ethics Counsellor**

The federal government created an Ethics Counsellor position in 1994. This position was set up to advise on the Conflict of Interest and post-Employment Code for Public Office Holders, (the "Conflict of Interest Code"), and to be responsible for both the amended Lobbyist Registration Act and the Lobbyist Registration Regulations that came into force on January 31, 1996. Administration of this legislation, which includes a mandatory code of conduct for lobbyists, is the responsibility of the Office of Ethics, Industry Canada. Enforcement is the responsibility of the RCMP.

- **Strengthening Ontarians' Perception of Their Government**

To counter the perceived weakness in the integrity of the Government of Ontario the administration of the Ontario Lobbyists Registration Act was assigned to the Office of the Ontario Integrity Commissioner. Tougher conflict of interest codes were introduced for public office holders.

3. Transparency

Introduction of Lobbyist Registration Legislation was expected to provide substantial contributions to the transparency goals of both governments.

4.3 Assessed Performance - Federal

1. Federal Government

In accordance with legislative requirements, the Standing Committee on Industry, Science and Technology, chaired by Susan Whelan, M.P. (comprised mostly of Liberal government M.P.s) recently reviewed the current federal lobbyist registration legislation. The report of the review committee entitled *"Transparency in the Information Age: The Lobbyists Registration Act in the 21st Century"*, was tabled in Parliament on June 12, 2001. (See Appendix 4.)

Based upon the evidence presented for consideration, the Standing Committee views the lobbyist registration system, as, "on balance, working well to achieve the objectives for which it was designed." Further, the Standing Committee views the system as "work in progress." It sees implementation of the committee's 25 recommendations, not really as fundamental changes, but as changes that will result in a more efficient, more effective, and a more enforceable system.

The Standing Committee, witnesses and the media have raised issues regarding the present administration of the federal Lobbyist Registration System. The Bloc Québécois published a dissenting opinion, citing timidity on behalf of the Standing Committee in regulating lobbyist activities and on failure to address certain aspects of the work of the Ethics Counsellor. Notwithstanding this minority report, the key issues raised by the Standing Committee are:

- **Role of the Federal Ethics Counsellor**

The dual reporting role of the Ethics Counsellor was seen to be confusing. Witnesses and the committee members agreed that responsibility for the Lobbyist Code should be placed with an official that reports to Parliament. The justification for this proposal was based on the view that "lobbying is the concern of all Members of Parliament not just that of the Prime Minister, his Cabinet and the members of the governing party." This position has been the subject of supportive editorial comment at the national level.

- **Enforcement**

Many different parties have criticized the strength of the federal lobbyist registration system. The media have reported that the Act has been described by a Crown prosecutor as "too vague" and that "a conviction is unlikely under the circumstances." In fact, despite a few well-documented cases no one has yet been prosecuted using this legislation. The Standing Committee, itself, has recommended that the enforcement provisions of the Act be strengthened.

- **Compliance**

A continuing concern is the question of compliance. Based upon the results of a study, the Association of Canadian Manufacturers and Exporters, (CME), believe that most business sector lobbyists "...are registered in compliance with the Act. The same cannot be said, however, of paid lobbyists representing organizations outside the business sector...." Anecdotal reports by the National Post suggest, "The failure to punish anyone has simply resulted in many lobbyists simply choosing not to register their activities ...It is also clear that lobbyists that are not in compliance need only to profess their ignorance to the Registrar and belatedly submit a registration to escape sanctions."

The Standing Committee has acknowledged these concerns and has recommended " the Government undertake a study to determine rates of compliance under the Act and the reasons for non-compliance where it exists."

4.4 Assessed Performance - Province of Ontario

The Ontario legislation has only been in operation for a short time and as such has not been subjected to rigorous review. However, according to the Annual Report, the general impression is that the goals of openness and transparency have been achieved. To date only two complaints against lobbyist activity have been received. On investigation, both were easily resolved without recourse to the legislation.

In terms of operational performance, benefits identified to date include greater openness and transparency in the dealings of the provincial government, ability of ministers and others to check lobbyists prior to meetings, and ease of access to public information by users. Lobbyists enjoy public exposure of their company services to industry, government and the public. Presently, attention is focused upon cost recovery options given that the preferred use of the system is by Internet services that are free to the lobbyist.

[redacted]

The following subsections summarize the anticipated costs and considerations for the establishment of lobbyist registration legislation for Alberta.

5.1 Alberta Set-up Costs

The size and scope of the federal and Ontario registries provide a basis for estimation of start-up costs and operating costs for similar systems to be developed in other jurisdictions.

For the purposes of this study, the Ontario system is assumed duplicated using new commercially available software that would cost approximately $65,000 to purchase and install. Although it is technically feasible to adapt an existing registry system, it is not possible to estimate upgrading costs without further extensive investigation outside the scope of the study.

With these assumptions, the cost to develop and put in place a new lobbyist registry office is estimated to be between $115,000 and $150,000 not including manpower costs. Once operational, the annual operating cost, including manpower, would be in the range of $150,000 to $200,000 depending upon the scope of the work undertaken and the definitions chosen.

5.2 Definitions

The definitions set within lobbying registration legislation can profoundly impact the ability of government to control some of the many forms of lobbying within the province. Using relevant portions of the existing federal or Ontario definitions for application in Alberta would capture only some types of lobbyist activities. Essentially this would be limited to paid individuals who undertake lobbying activities for a significant portion of their working time or to non-profit organizations where lobbying is undertaken by one or more individual employees for significant portions of their time.

In many cases this legislation would provide no control over the activities of some forms of lobbying. This legislation would not apply minimal control in many other cases. By way of example such legislation would not apply to individuals who lobby public office holders on an infrequent basis such as property developers seeking to acquire a provincial license in support of commercial development activities.

5.3 Transparency Goals and Objectives

An important conclusion of the review of the federal Lobbyist Registration Act was that this type of legislation is really about transparency and making public advocacy more transparent. Further, that the core policy issue for consideration is the public consultation process and how that policy should be developed, particularly in the context of rapid technological change resulting from the development of the Internet.

The present lobbyist registration systems must therefore be seen as work in progress rather than the realization of a final working model. A simple duplication of the federal or the Ontario registry legislation in Alberta might be considered. However, it must be assumed that such models are already outdated in terms of their design. Consequently, their potential to contribute to government transparency goals, and the development of new forms of public consultation protocols and methodologies must be considered problematic.

5.4 New Forms of Lobbyist

The federal review also identified that the pace of technological change, in particular the development of the Internet is beginning to have a significant impact upon lobbying and the public consultation process. The almost total acceptance of Internet access to the federal lobbyist registration by both lobbyists and the users has accelerated the merge between public and private sector interests. At the same time, a significant contribution has been made to the goal of improved government transparency by virtue of the accessibility offered by the Internet.

However, expanded Internet use has resulted in the emergence of new types of lobbyists who may not conform either to conventional lobbyist practices or to established norms for transparency and identity. In contrast to present-day associations that have laws of incorporation and structure, some "new" lobbyist organizations have little organizational structure and no rules that govern behaviour.

Some of these lobbyists have already demonstrated the ability to influence government and industry policy and direction. An example provided to the Standing Committee was in the area of genetically modified foods. Here civil society groups used Internet techniques to place pressure on mainstream corporations and gained significant changes to industry policy and direction.

Application of existing Canadian legislation as it is written today would not address the challenges presented by these new forms of lobbying and lobbyists that are rapidly emerging within society.

6.1 General Conclusion

The review reveals that simple duplication of either of the federal or Ontario lobbyist registry systems in Alberta would not necessarily meet its intended outcome. Rather, the most appropriate elements of each of these systems would need to be selected, modernized and radically expanded, where appropriate, to reflect probable changes in lobbying practices, technology and the industry. Also, due to the absence of complaints to Alberta Government Services, a lobbyist registry is not a priority for Albertans.

6.2 Need For Legislation

Among reasons cited for the introduction of the federal and Ontario legislation was the need for reestablishing trust, transparency and an open government. In addition to promoting transparency and public trust in government, lobbyist legislation is also seen to provide lobbyists the opportunity to advertise their business and allows politicians and other public office holders to better prepare for dealings with lobbyists.

Similar legislation in Alberta would need to be justified considering the absence of evidence of complaints to Alberta Government Services about lobbyists coming from Albertans. Also, questions about lack of trust in government in Alberta, what problems would a lobbyist registry solve, what would remain unsecured both now and in the future, and at what overall cost, would need to be addressed.

6.3 Definition of Lobbyist

Both the federal and Ontario Acts define lobbyists in essentially the same manner. Extending these definitions to Alberta would be adequate in terms of achieving an image of openness and transparency and maintaining consistency throughout Canada. Essentially this definition would limit lobbyists to paid individuals who undertake lobbying activities for a significant portion of their working time or to non-profit organizations where lobbying is undertaken by one or more individual employees for significant portions of their time.

However, an important consideration is that the application of this definition in Alberta may not catch all questionable incidents involving lobbyists and public office holders, specifically those involving the commission of illegal acts.

6.4 Responsibility for the Legislation

Consideration would need to be given to who should be responsible for the development, administration and enforcement of lobbyist registration legislation in Alberta and its reporting relationship to the Legislature. The federal and Ontario registries fall under the Ethics Counsellor and the Integrity Commissioner respectively. The former reports to the Minister of Industry while the latter reports to the Ontario legislature. Critics want the Ethics Counsellor to report directly to the House of Commons because lobbying affects all Members of Parliament not just the Prime Minister and government Caucus.

6.5 Compliance and Enforcement

Neither the federal nor the Ontario governments have ever charged or otherwise sanctioned violators of their respective legislation. In the federal system the legislation appears to lack sufficiently definitive

language to promote successful prosecutions prompting the Standing Committee to recommend stronger enforcement provisions. Regarding compliance with registration requirements, it appears that due to a lack of sanctions levied on perpetrators, some unregistered lobbyists choose not to get registered, or when approached, plead ignorance and submit belated registration applications without consequence.

To ensure public confidence in a lobbyist registry system for Alberta, the legislation needs to be strong enough to support prosecutions and other sanctions. There is also the question of which law enforcement agency would enforce the legislation. Options include in-house investigators, the RCMP or municipal policies services.

6.6 Lobbying by Electronic Means

The federal review cited that new forms of lobbying tools, such as the use of the Internet, are problematic.

Lobbyist legislation for Alberta would need to address situations such as an Internet based e-mail campaign originating from a server located outside provincial jurisdiction.

Based on the findings of this study and the absence of complaints from Albertans there does not appear to be a need for a lobbyist registry in Alberta. Therefore, it is recommended that the Alberta Government not establish a Lobbyist registry at this time.

8.0 Appendix 1: Annual Report for the Lobbyists Registration Act of Canada

LOBBYISTS REGISTRATION ACT

Annual Report

FOR THE YEAR ENDED
MARCH 31, 2000

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June 30, 2000

The Honourable John Manley, P.C., M.P.
Registrar General of Canada
House of Commons
Confederation Building
Ottawa ON K1A 0A6

Dear Sir:

I have the honour to present to you the eleventh Annual Report by the Registrar on the administration of the information disclosure and public registry provisions of the *Lobbyists Registration Act* (R.S.C. 1985, c.44 (4th supp.) as amended by S.C. 1995, c.12). This report is presented in accordance with the provisions of subsection 11(1) of the Act. The report covers the fiscal year ending March 31, 2000.

Yours sincerely,

Diane Champagne-Paul
Registrar

Canada

Contents

Purpose and Description of the Act

Lobbyists Registration Branch

Electronic Filing

Public Registry

Statistical Review

- Advisory and Information Services
- Subject Matter of Lobbying Activities
- Government Departments and Agencies
- Registrations

Additional Information

This is the eleventh Annual Report by the Registrar on the administration of the information disclosure and public registry provisions of the *Lobbyists Registration Act* (R.S.C. 1985, c.44 (4th supp.) as amended by S.C. 1995, c.12). This report covers the period from April 1, 1999, to March 31, 2000.

Purpose and Description of the Act

Major amendments to the *Lobbyists Registration Act* and the *Lobbyists Registration Regulations* came into force on January 31, 1996, and require lobbyists to disclose more comprehensive information about their activities.

The Act provides for the public registration of those individuals who are paid to communicate with federal public office holders in attempts to influence government decisions, i.e., lobby. Public office holders are virtually all persons occupying an elected or appointed position in the federal government, including members of the House of Commons and the Senate and their staff, officers and employees of federal departments and agencies, members of the Canadian Armed Forces and the Royal Canadian Mounted Police (RCMP).

Four basic principles are set out in the preamble to the Act:

- free and open access to government is an important matter of public interest;
- lobbying public office holders is a legitimate activity;
- it is desirable that public office holders and the general public be able to know who is attempting to influence government; and
- the system for the registration of paid lobbyists should not impede free and open access to government.

Lobbying, or the activity that is subject to the requirements for registration as a lobbyist, is communicating with federal public office holders, whether formally or informally, in attempts to influence:

- the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs;
- the awarding of federal grants, contributions or other financial benefits.

The Act provides for three categories of lobbyists.

Consultant lobbyists are individuals who, for payment, lobby on behalf of a client. Consultant lobbyists are also required to register if they undertake to arrange a meeting between their client and a public office holder, and if they lobby for the awarding of a federal contract. Consultant lobbyists may include government relations consultants, lawyers, accountants or other professional advisors who provide lobbying services for their clients.

In-house lobbyists (corporate) are employees of corporations that carry on commercial activities for financial gain who lobby as a significant part of their duties. These employees of a company are usually full-time officers who devote a significant part of their duties to public affairs or government relations work.

For non-profit organizations such as associations, the senior paid officer must register as an in-house lobbyist (organizations) when one or more employees lobby federal public office holders and where the accumulated lobbying activity of all such employees would constitute a significant part of the duties of one employee.

Specifically excluded from the registration requirements are public proceedings before parliamentary committees or other federal bodies; submissions to a public office holder with respect to the enforcement, interpretation or application of a federal law or regulation by that official; and submissions in direct response to written requests from a public office holder for advice or comment.

All lobbyists are required to disclose certain information within time limits specified in the Act. The information includes the name of the client, corporate or organizational employer; the names of the parent or subsidiary companies that would benefit from the lobbying activity; the organizational members of coalition groups; the specific subject matters lobbied; the names of the federal departments or agencies contacted; the source and amount of any government funding received; and the communication techniques used, such as grass-roots lobbying. Corporations and organizations must also provide a general description of their business or activities.

The *Lobbyists Registration Regulations* set out the detailed forms that lobbyists must complete and file. Lobbyists may complete and file these registration forms electronically, free of charge. The fee schedule for processing of forms submitted in paper format was published in the *Canada Gazette* Part I, December 16, 1995.

Registration under the Act is the responsibility of the individual lobbyist. The Act provides severe penalties for those who fail to register or who submit false or misleading information in their registration forms. Enforcement is the responsibility of the RCMP, and the limitation period for such proceedings is two years.

During the year, one case of alleged lobbying without registration was referred to the RCMP for investigation. This investigation is still ongoing.

Separately, the Act also provides for a mandatory code of conduct for lobbyists, and the submission of an Annual Report on this code. The *Lobbyists' Code of Conduct*, which took effect March 1, 1997, is the responsibility of the Ethics Counsellor.

The statute provides for a review of the administration and operation of the Act by a parliamentary committee four years after the coming into force.

To prepare for this, on November 1, 1999, the Lobbyists Registration Branch, through the Office of the Ethics Counsellor, launched a consultation process

on its Web site and by means of a mass mailing. Although the mailing was extensive (it involved sending approximately 1800 letters inviting comments) and included all registered lobbyists as well as other interested individuals and groups, few responses were received. The majority of respondents felt that the Act is working well; however, there were a few of the opinion that some improvements are necessary. The comments received will be provided to the parliamentary committee when it begins its review of the Act.

Top of Page

Lobbyists Registration Branch

Responsibility for administration of the information disclosure provisions of the Act and maintenance of the public registry is assigned to a Registrar designated by the Registrar General of Canada (Minister of Industry). The Registrar heads the Lobbyists Registration Branch of the Office of the Ethics Counsellor.

Under the Act, lobbyists must provide clarification of any information they submit in their registration forms in response to a request from the Registrar. The Registrar also has the authority to verify this information. All forms submitted for registration are checked for completeness and clarity. Inconsistencies or obvious omissions are communicated to the lobbyist for correction or for supplementary information.

The Act authorizes the Registrar to issue advisory opinions and interpretation bulletins in order to provide greater certainty regarding the registration provisions.

Although in the previous year, consultations were undertaken with a view to making revisions to the interpretation bulletin addressing the meaning of the expression "significant part of the duties" as it applies to in-house lobbyists (corporate), it was concluded that this would be more appropriately addressed as part of the forthcoming review of the Act by a parliamentary committee.

All of the publications and bulletins issued on the Act, as well as those on the code of conduct for lobbyists, are available at http://strategis.gc.ca/lobbyist

The Registrar continued an active public information campaign to discuss and

provide advice to lobbyists and potential lobbyists about the requirements for registration and to encourage firms, companies and associations to review their situations. The Lobbyists Registration Branch also disseminated information on the Act and Regulations through interviews with the media, and discussions with professional and industry associations, universities and government officials.

Federal government public office holders were reminded about the registration requirements for lobbyists and informed about the services of the registry in letters sent with the Annual Report to federal deputy ministers and Governor-in-Council appointees.

During the year, the Registrar responded to queries about the federal lobbyists legislation and its supporting computer systems from provincial government officials in Ontario, Quebec and British Columbia, as well as officials from Washington, D.C. She also continued to participate actively in the work of an international council of government administrators of ethics laws.

Top of Page

Electronic Filing

Lobbyists may file their registration forms electronically, free of charge, through the Internet (http://strategis.gc.ca/lobbyist). This user-friendly interactive technology validates basic data such as names and addresses, reminds lobbyists to complete all required information and permits them to easily edit their own forms. Data, once verified, are moved immediately to the registry database where the general public can search for information and produce reports from their own computers.

Of the total registrations received as of March 31, 2000, 98 percent of the consultant lobbyists actively lobbying continue to register electronically. This year, 97.5 percent of both organizations and in-house lobbyists (corporate) filed their registrations electronically, an increase of 1.5 percent since last year.

Before lobbyists can use the computer systems to file the registration forms required by the Act, they must provide identification for system access. They must then also sign a contractual agreement acknowledging the responsibility

for security of their electronic signature or password used to certify the validity of the information they submit.

Officials from several organizations, companies and firms that do not yet have the necessary equipment used the facilities within the Lobbyists Registration Branch to file their registrations electronically. As well, lobbyists may use the facilities of the Industry Canada regional offices.

Top of Page

Public Registry

The concept of openness is one of the fundamental principles that underlie the registration system of the *Lobbyists Registration Act*. All information collected under this Act and its Regulations is a matter of public record. The objective of the registry is to ensure that the general public and public office holders know who is paid to attempt to influence government decisions.

The registry database is available to all Canadians (http://strategis.gc.ca/lobbyist). Anyone can use their own computer to easily search and retrieve information on who lobbies for which firms, corporations, organizations or associations; the parent and subsidiary companies or corporations that benefit from the lobbying; the organizational members of coalition groups; a general description of the activities of corporations and associations; which government departments or agencies are contacted; and the name or description of the specific legislative proposals, bills, regulations, policies, programs, grants, contributions or contracts sought.

As well, users can produce their own summary reports of lobbyists registered as well as copies of the individual registration forms. It is also possible to access a list of recent registrations that includes all new registrations, amendments and terminations that were processed within the past 30 days.

Users who search and retrieve the data directly from their own computers may do so free of charge. If registry staff are requested to search and retrieve information, a service charge is applicable.

Top of Page

Statistical Review

ADVISORY AND INFORMATION SERVICES

The Lobbyists Registration Branch provides advice on the registration requirements, reminds lobbyists to update and refile their registration forms, and verifies that all forms are consistent and complete.

This year, as a result of the initiation of consultations in preparation for the upcoming parliamentary review, the Lobbyists Registration Branch received a number of calls inquiring as to the timing of, and the process to be followed for, the review. General information and compliance calls were also received. In total, there were 1042 program calls in 1999–2000, a slight decrease from the1134 calls received the previous year.

The number of calls for technology assistance increased from last year, which can be explained by the increase in the percentage of electronic filings. Branch staff and the Industry Canada *Strategis* help desk personnel responded to calls for the lobbyists registry site address, navigational assistance, forgotten passwords, broken links and other technical problems. This year, there were 949 help line calls, compared to 776 calls last year.

The key principle of the *Lobbyists Registration Act*, transparency, is that public office holders and the public should be able to know who is attempting to influence government. The lobbyists registry is directly accessible through *Strategis* to all users for searches and information retrieval on their own computers. Users are gaining their own expertise in how to directly access and search the computerized registry system.

Again this year, there has been an increase in the number of pages of text and data accessed on *Strategis* by users from their own computers. In 1999–2000, there were 27 365 visits to the Lobbyists section of the site, during which some 219 400 pages were accessed, an impressive total for a small program.

Top of Page

SUBJECT MATTER OF LOBBYING ACTIVITIES

All lobbyists are required to identify the broad subject matter of their lobbying activities from a pre-selected checklist. The following list identifies, in descending order from active registrations, the 20 subject areas most frequently identified by lobbyists in their registrations as of March 31.

	1998-99	1999-2000
Industry	1	1
International trade	3	2
Taxation and finance	2	3
Environment	4	4
Science and technology	5	5
Health	6	6
Consumer issues	8	7
Transportation	7	8
Employment and training	10	9
Internal trade	9	10
Government procurement	12	11
International relations	14	12
Regional development	16	13
Energy	11	14
Intellectual property	15	15
Agriculture	20	16
Telecommunications	18	17
Small business	19	18
Financial institutions	13	19
Labour	17	20

Top of Page

GOVERNMENT DEPARTMENTS AND AGENCIES

All lobbyists are required to identify the names of the government departments and agencies that they contact or expect to contact in the course of their lobbying activities. The following list identifies, in descending order from active registrations, the 20 departments and agencies most frequently identified by lobbyists in their registrations as of March 31.

	1998-99	1999-2000
Industry Canada	1	1
Finance Canada	2	2
Foreign Affairs and International Trade	3	3
Revenue Canada	4	4
Environment Canada	5	5
Privy Council Office	8	6
Health Canada	6	7
Transport Canada	7	8
Human Resources Development Canada	11	9
Natural Resources Canada	9	10
Public Works and Government Services Canada	10	11
Treasury Board of Canada	12	12
Canadian Heritage	13	13
Agriculture and Agri-Food Canada	14	14
Fisheries and Oceans Canada / Justice Canada*	15 & 17	15
National Defence	16	16
Statistics Canada	19	17
Canadian International Development Agency	18	18
Indian and Northern Affairs Canada**	n/a	19
Western Economic Diversification	20	20

* These two government departments were equally identified by lobbyists in their registrations for the reporting period.

** This department did not form part of the 20 most frequently identified departments for the previous reporting period.

Top of Page

REGISTRATIONS

On March 31, 2000, there were 702 registered active consultant lobbyists, an increase of 14 percent from the 618 consultants registered last year. These consultants, who work for 364 firms across Canada, include government relations consultants, lawyers, accountants, and other professionals who provide lobbying services for their clients.

During the year, to help ensure that the lobbyists registry remained up-to-date, the Registrar asked all consultant lobbyists who had registered between January 1998 and June 1998 to review and update the 209 registrations they had filed during this period. Subsequently, 29 registrations, or 14 percent, were terminated and an additional 27 registrations, or 13 percent, were amended for client contact name, telephone number or address, or for more substantive changes such as subject matter or the various government departments and agencies to be contacted.

On March 31, 2000, there were 335 employees registered as lobbying the federal government on behalf of their corporate employer as a significant part of their duties. These in-house lobbyists (corporate) include 36 presidents/chief executive officers. The interests of 179 corporations were represented in the registry systems, a decrease from last year due to corporate mergers and re-evaluations by officials of their need to register when lobbying activity is less than 20 percent of their duties.

Senior paid officers had registered as in-house lobbyists (organizations) for 382 non-profit societies and interest groups as well as business, trade, industry, and professional organizations or associations, an increase of 5.5 percent since last year.

	1998-99	1999-2000
Lobbyists active as of March 31		
Consultant lobbyists	618	702
In-house lobbyists (corporate)	352	335
Organizations (senior officers)	362	370

Registrations active as of March 31		
Consultant lobbyists	2060	2401
In-house lobbyists (corporate)	352	336
In-house lobbyists (organizations)	362	382

Top of Page

Additional Information

For the legal text of the Act and Regulations, consult:

- *Lobbyists Registration Act*, R.S.C. 1985, c.44 (4th supp.);
- *Lobbyists Registration Regulations, Canada Gazette* Part II, December 27, 1995; and
- *Lobbyists Registration and Service Fees, Canada Gazette* Part I, December 16, 1995.

Publications available on the Internet include the *Guide to Registration*, which covers the basic requirements of the *Lobbyists Registration Act* and contains a summary *Quick Reference Guide to Registration*; the advisory opinions and interpretation bulletins; an informal consolidation of the Act; previous annual reports; and the *Lobbyists' Code of Conduct*.

The lobbyists registry data are accessible free of charge on the Internet for viewing, searching, and production of summary reports.

Consult: http://strategis.gc.ca/lobbyist

For further information, please contact:

Lobbyists Registration Branch
Office of the Ethics Counsellor

Industry Canada
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66 Slater Street
Ottawa ON K1A 0C9

Tel.: (613) 957-2760
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E-mail: lobbyists.reg@ic.gc.ca

Publication Date: 2000-10-04
Author: Lobbyist Registration

Important Notices and Disclaimers
Privacy Statement

Canada
http://strategis.gc.ca

9.0 Appendix 2: Annual Report of the Lobbyist Registration Act of Ontario

Lobbyists Registration Act, 1998 (Ontario)

ANNUAL REPORT

January 15, 1999 - March 31, 2000

Office of the Integrity Commissioner

Copies of this and other Ontario Government publications are available at 880 Bay Street, Toronto, ON M7A 1N3 or Access Ontario, Rideau Centre Mall, 161 Elgin Street, Ottawa, ON K2P 2K1. **Other out-of-town customers** may write to: Publications Ontario, 50 Grosvenor Street, Toronto, ON M7A 1N8. Telephone (416) 326-5300, or toll-free in Ontario 1-800-668-9938, Fax (416) 326-5317. **For Ottawa and surrounding areas,** Access Ontario (613) 238-3630 or toll-free in Ontario 1-800-268-8758, Fax (613) 566-2234. **Hearing-impaired customers** may call toll-free in Ontario 1-800-268-7095.. Visa and Mastercharge are accepted.

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Ontario

Lobbyists Registration Office
Office of the Integrity Commissioner

Bureau d'enregistrement des lobbyistes
Bureau du Commissaire à l'intégrité

The Honourable Robert C. Rutherford
M.B.E., C.D., Q.C., LL.B
Registrar

L'honorable Robert C. Rutherford
M.B.E., C.D., C.R., LL.B
Registrateur

June 19, 2000

The Honourable Gary Carr
Speaker of the Legislative Assembly
Room 180, Legislative Building
Queen's Park
Toronto, Ontario
M7A 1A2

Dear Mr. Speaker:

I have the honour and pleasure to present the first Annual Report with respect to the administration of the *Lobbyists Registration Act, 1998, S.O. 1998, c.27* for the fourteen-month period of January 15th, 1999 to March 31st, 2000.

This Report is submitted pursuant to s.10 of the *Lobbyists Registration Act, 1998*, and s. 24 of the *Members' Integrity Act, 1994.*

Yours very truly,

The Honourable Robert C. Rutherford,
Integrity Commissioner

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TABLE OF CONTENTS

	Page Number
Background	1
Purpose of the Act	1
Description of the Act	2
Offences and Penalties	3
Lobbyist Registrar	4
Registration Process	5
A. Electronic Filing	5
B. Manual Filing	5
Public Registry	7
Statistics	
A. Registrations	8
B. Subject Matter of Lobbying Activities	9
C. Government Ministries and Agencies	10
Appendices	
Appendix "A" – Advisory Opinion No. 1	11
Appendix "B" – Interpretation Bulletin No. 1	13
Appendix "C" – Interpretation Bulletin No. 2	14

This is the first Annual Report of the *Lobbyists Registration Act, 1998, S.O. 1998, c.27* covering the fourteen-month period, January 15th, 1999 to March 31st, 2000.

BACKGROUND

On October 6, 1998, the Chair of Management Board of Cabinet, The Honourable Chris Hodgson, introduced *An Act to amend the Members' Integrity Act, 1994 and to enact the Lobbyists Registration Act, 1998* stating:

> *"This government is committed to managing its business operations in an open, accountable and accessible manner. Lobbying is part of the democratic process, but the public has a right to have access to information about organizations and individuals that are seeking to influence government decision-making.... A public record of paid lobbyists will ensure that the process of lobbying government is kept open and transparent and that the public interest is protected from undue influence."*

The Canadian federal government, the United States federal government and many U.S. state governments have lobbyist registration laws in place, and the *Lobbyists Registration Act*, which is similar to the Canadian federal government's lobbyist legislation, made Ontario the first Canadian province to enact legislation establishing a lobbyist registry.

The *Lobbyists Registration Act, S.O. 1998, c.27,* was proclaimed on January 15, 1999.

Unlike the federal Act, this legislation does not include a Code of Conduct. Various mechanisms already exist which regulate the relationship between lobbyists and their clients and public office holders, and professional codes of conduct establish the behaviour for associations and industries. For example, lawyers are regulated by a professional code of conduct, and lobbyists have their own industry codes. Similarly, legislation such as the Criminal Code, Public Service Act, and the Members' Integrity Act also regulate lobbyists and public office holders, along with government procurement and conflict of interest policies and directives, safe-guarding the integrity of the government.

PURPOSE OF THE ACT

Lobbying is a legitimate activity providing free and open access to government and protecting the integrity of the provincial government from undue influence. It is a registration system, not a regulation, and the *Act* provides the public, public office holders and lobbyists with the opportunity and means to know who is talking to whom in government about what.

DESCRIPTION OF THE ACT

Lobbying is defined as a communication between a paid lobbyist and a public office holder in an attempt to influence government decisions about:

- Legislative proposals, bills and regulations
- Changes to policies, programs and decisions
- Awarding of grants, contributions and other financial benefits
- Privatization and outsourcing

The *Act* recognizes that some communications between government and individuals, firms or organizations are purely consultative and essential to public policy making, however, for the purposes of this legislation, lobbying does not include:

- Oral and written submissions to legislative committees;
- Oral and written submissions made to a public office holder with respect to the enforcement, interpretation, or application of any act, policy, programme, directive, or guideline;
- Oral and written submissions made in direct response to written requests for advice or comment;
- Routine constituency communications between MPPs and constituents.

A public office holder is broadly defined and includes cabinet ministers, MPPs and staff, public servants under the Public Service Act, persons appointed to office by Order-in-Council, members of the Ontario Provincial Police and officers, directors and employees of provincial government agencies, boards and commissions. This does not include the broader sector entities such as hospitals, universities, local government institutions, Legislative Officers, judges and justices of the peace.

The *Act* provides for three categories of lobbyists:

(1) A consultant lobbyist is retained by a client for a fee to communicate with a public office holder in Ontario. Examples include government relations consultants, lawyers and accountants.

(2) An in-house lobbyist is employed by a corporation or partnership that carries on commercial activities for financial gain and lobbies as a significant part of their duties.

(3) An in-house lobbyist is employed by a non-profit organization. Examples include associations, Chambers of Commerce, community-based organizations, charitable organizations and advocacy groups. The most senior compensated officer of the organization is required to provide the name of each in-house lobbyist employed by the organization when the accumulated lobbying activity of all such employees constitutes a significant part of the duties of one employee.

All lobbyists are required to register within a specified time limit from the commencement of lobbying activities and provide information as set out in the *Act*, including, the name of the client or organization or corporate employer; the subject matter of lobbying; a description of the specific legislative proposals, bills, regulations, policies, programs, grants, contributions or contracts sought; the ministries, agencies, boards, and commissions and MPPs lobbied; the source and amount of government funding received by the lobbyist's client or employer; the name of any non-government entity or organization which, in the fiscal year prior to the date of filing, provided $750 or more to the client/employer in support of the lobbying activity; and the communication techniques used to lobby. In-house corporate lobbyists and in-house organization lobbyists must also provide a general description of their business activities.

OFFENCES AND PENALTIES

A lobbyist as defined under the *Act* may be committing an offence if:

(1) lobbying activities as defined in the *Act* are conducted and a registration form is not submitted within the time frames set out in the *Act*;
(2) the required information is not provided in a registration form;
(3) changes to a registration form, new information or clarification of information as requested by the Lobbyist Registrar is not provided;
(4) false or misleading statements are provided;
(5) the lobbyist knowingly places a public office holder in a position of real or potential conflict of interest.

Any person who contravenes the Ontario *Lobbyists Registration Act* is liable on summary conviction to a fine of up to $25,000, a penalty which is consistent with the provisions of other provincial statutes for serious provincial offences.

We are pleased to advise that there have been no violations under the *Lobbyists Registration Act*.

LOBBYIST REGISTRAR

The responsibility for the administration of the public registry has been assigned to the Integrity Commissioner, who has authority to delegate his or her powers and duties under the *Act*.

The *Act* provides that the Registrar review all registrations, identify omissions and/or inconsistencies and seek clarification of information submitted by the lobbyist where necessary; and has the authority to verify the information provided. The Registrar is also required to ensure public accessibility to the lobbyist register and submit Annual Reports on the administration of the *Act* to the Legislative Assembly.

During the first six months of start-up of the Lobbyists Registration Office ("LRO"), education programs were conducted by the Lobbyist Registrar with lobbyist groups and discussions with public office holders, consultant lobbyists and industries and associations provided information with respect to the interpretation of the *Act*. These discussions continue from time to time and we welcome the opportunity to meet with any individual or group to discuss the *Act* or provide advice under the *Act*.

In addition to the above responsibilities, the Lobbyist Registrar may issue advisory opinions and interpretation bulletins as required with respect to the enforcement, interpretation or application of the *Act*.

During the past 18 months, the LRO received a number of inquiries with respect to the definition of lobbying as it applies to broader sector entities. Generally speaking, where entities in the broader sector have a specific statutory mandate to conduct certain activities related to legislation, these activities are not considered to be lobbying. However, any communication activities outside the activities identified in the legislation may meet the definition of lobbying under the *Act*, and would require registration if the entity meets the definition of significant part of their duties.

During the reporting period of this Report, one advisory opinion was issued with respect to the definition of "public office holder" and its application to Ontario Hydro, which under legislation was divided into five successor corporations. Advisory Opinion No. 1 is attached as Appendix "A" to this Report.

Interpretation Bulletins Nos. 1 and 2 were also issued with respect to:

(1) the definition of "the period for which the return is filed" and "the next following six-month period"; and
(2) the definition of "a significant part of duties" .

These Bulletins are attached as Appendices "B" and "C" to this Report.

All Opinions and Bulletins are available on the LRO website ***http://lobbyist.oico.on.ca***

REGISTRATION PROCESS

All persons who meet any of the definitions of lobbyist under the *Lobbyist Registration Act, 1998* must register their activities on the lobbyist registry, which is accessible through the LRO website ***http://lobbyist.oico.on.ca***. This site is the principle means of disseminating information relevant to public office holders, the public and lobbyists with respect to those working to influence government activities.

Lobbyists are required to file registration forms and have a choice to file manually or electronically, through the LRO website.

A. Electronic Filing

The electronic format permits the lobbyist to submit via the internet the required information for approval purposes. Before a lobbyist can use the electronic filing process, identification information and an executed User Agreement must be submitted. The lobbyist is then provided with a unique identification and secure access to their registration.

The Registrar's approval is acknowledged with the lobbyist by email and the registration is automatically placed on the public registry.

Registration on-line is free of charge and in accordance with the *Act* gives lobbyists the ability to electronically file Initial Registrations, Notices of Change to Information, Renewals and Terminations.

Although not required by legislation, the LRO has implemented an automatic email reminder system to all lobbyists when registrations are due for renewal. The *Act* provides that consultant and in-house commercial lobbyists must renew on an annual basis and in-house organizations are required to renew every six months.

B. Manual Filing

Those lobbyists who do not have the required computer resources are able to use the facilities available in the Lobbyists Registration Office to file registrations electronically, failing which, paper forms are available from the LRO. A registration fee applies to manual registrations.

Upon receipt of a manual registration, the information is entered into the database by the LRO staff and once approved by the Registrar, is automatically placed on the public registry. Lobbyists who use this form of filing are notified by mail with respect to approvals and renewal notices.

There is no fee charged for Notices of Change and Terminations, however, there is a fee for each Renewal.

As with any new program, start-up was not without its growing pains, however, our experience over the first few months enabled our technical consultants to develop not only a new look to the registration process, but also easier access to prepare and edit registration forms.

Initially, approximately 86 percent of lobbyists filed on line, however, by the end of the fiscal year, approximately 98.7 per cent have registered electronically.

PUBLIC REGISTRY

When this legislation was introduced, the Chair of Management Board stated,

> *"A public record of paid lobbyists will ensure that the process of lobbying government is kept open and transparent and that the public interest is protected from undue influence."*

All information submitted by lobbyists on the registration forms becomes part of the public record and is available in the lobbyists registry through the LRO website. The public can access information as to who has lobbied, who is lobbying, the clients and employers of lobbyists, parent and subsidiary companies of corporations that benefit from the lobbying, a description of the corporation and association business activities, what subject matters are the focus of the lobbying activities, including legislative proposals, bills, resolutions, regulations, policies, programs, decisions, and grants, privatization and outsourcing decisions, and the government ministries or agencies being lobbied. Also available is information as to whether a client or organization is funded in whole or in part by any government, whether there is any private funding related to the lobbying activities and the communication techniques being used.

Users can search the registry to produce their own reports and obtain copies of a lobbyist's registration form, free of charge, either through their own computers or through the facilities available at the Lobbyists Registration Office. However, if the report is produced by the staff at the Lobbyists Registration Office, a service fee is applied.

STATISTICS

A. Registrations

Since the implementation of the *Lobbyists Registration Act*, on January 15, 1999, and as of March 31st, 2000, there were 684 active registrations and 297 inactive registrations. Inactive registrations include undertakings which have been completed or terminated.

Consultant lobbyists are required to file a registration for each client and undertaking, and 188 active consultant lobbyists were registered as of the fiscal year end, representing a total of 511 registrations.

During the past 14 months, 78 employees registered on behalf of their corporate employer when their lobbying activity represented a significant part of their duties. These employees represented the interest of 50 corporations.

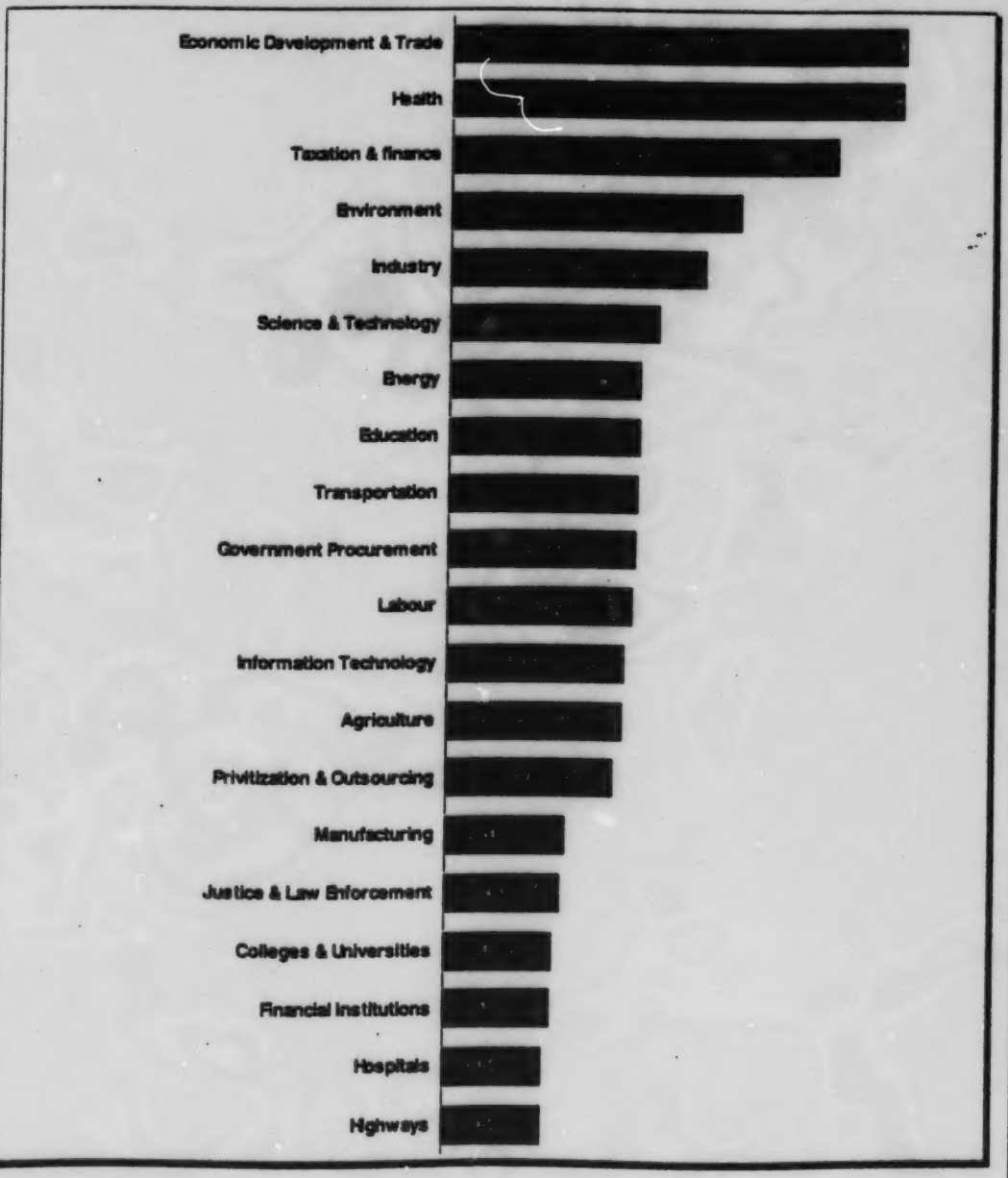
As of March 31st, 2000, 95 compensated senior officers were registered on behalf of their in-house organizations and the paid employees who lobby the Ontario government as a significant part of their duties. This group included industry, business and professional groups, together with charitable organizations.

REGISTRATIONS AS OF MARCH 31, 2000

	Consultant Lobbyists	In-House Lobbyists (Persons & Partnerships)	In-House Lobbyists (Organizations)
Lobbyists	188	78	95
Registrations	511	78	95
Terminations	286	3	8

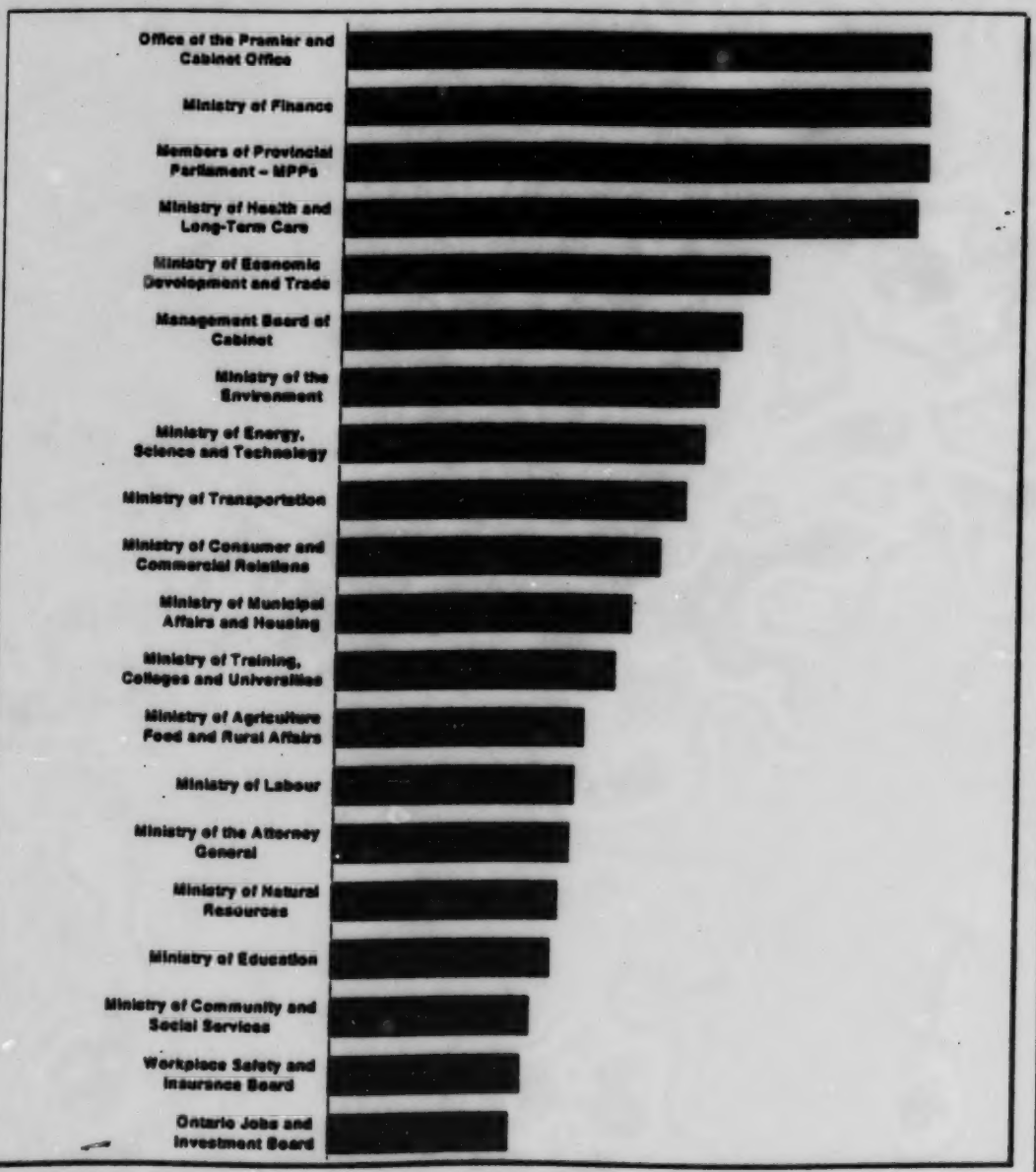
B. Subject Matter of Lobbying Activities

All lobbyists are required to disclose the areas of interest that identify the subject matter of their lobbying activities, and the following chart represents the 20 areas of interest most frequently identified by the lobbyists in active registrations as of March 31st, 2000.



C. Government Ministries and Agencies

All lobbyists are required to disclose the names of the ministries and agencies that they are in contact with or expect to be in contact with during the course of their lobbying activities. The chart below represents those 20 Ontario government ministries and agencies most frequently identified by the lobbyists as of March 31st, 2000.


Office of the Premier and Cabinet Office
Ministry of Finance
Members of Provincial Parliament – MPPs
Ministry of Health and Long-Term Care
Ministry of Economic Development and Trade
Management Board of Cabinet
Ministry of the Environment
Ministry of Energy, Science and Technology
Ministry of Transportation
Ministry of Consumer and Commercial Relations
Ministry of Municipal Affairs and Housing
Ministry of Training, Colleges and Universities
Ministry of Agriculture Food and Rural Affairs
Ministry of Labour
Ministry of the Attorney General
Ministry of Natural Resources
Ministry of Education
Ministry of Community and Social Services
Workplace Safety and Insurance Board
Ontario Jobs and Investment Board

APPENDIX " A "

LOBBYISTS REGISTRATION ACT, 1998

ADVISORY OPINION NO. 1

PUBLIC OFFICE HOLDERS: APPLICATION OF THE ACT TO ONTARIO HYDRO

Pursuant to s.15 of the *Lobbyists Registration Act, 1998*, (hereinafter referred to as the "*Act*"), this advisory opinion is issued by the Lobbyists Registrar to provide guidance on the application of the *Act*.

Under s.1 of the *Act*, a 'public office holder" is broadly defined and includes Cabinet Ministers, Members of Provincial Parliament and their staff, virtually all public servants unless otherwise exempted by regulation, officers, directors and employees of provincial government agencies, boards and commissions (but does not include broader public sector entities such as hospitals, universities and local government institutions), persons appointed to office by Order-in-Council and members of the Ontario Provincial Police.

The *Electricity Act, 1998* is Schedule A to the *Energy Competition Act*, 1998 S.O. 1998, c.15, the Act which, in effect, creates or authorizes the creation of the following five successor corporations to Ontario Hydro:

(1) Independent Electricity Market Operation ("IMO") to ensure fair and open market access and to oversee GENCO and SERVCO.

(2) Ontario Electricity Generation Corporation Inc. ("GENCO") to own and operate the generation facilities.

(3) Ontario Electric Services Corporation ("SERVCO") to own and operate the transmission and distribution systems through subsidiaries of the Corporation.

(4) Ontario Electricity Financial Corporation to manage the provincial guaranteed debt of the former Ontario Hydro.

(5) Electrical Safety Authority to oversee the installation and inspection of electrical equipment.

Sections 6 and 51 of the *Energy Competition Act* specifically state that the IMO, GENCO and SERVCO are not "*agent(s) of Her Majesty for any purposes, despite the Crown Agency Act.*" Therefore, IMO, GENCO and SERVCO are not public office holders for purposes of the *Lobbyists Registration Act*.

Section 56 of the *Energy Competition Act* provides that the Ontario Electricity Financial Corporation "*is an agent of Her Majesty for all purposes.*" It follows then, that the Ontario Electricity Financial Corporation is a public officer holder for purposes of the *Lobbyists Registration Act*.

The purpose of the *Safety and Consumer Statutes Administration Act, 1996* is

> "*...to facilitate the administration of designated Acts named in the Schedule by delegating to designated administrative authorities certain powers and duties relating to the administration of those Act.*"

The Electrical Safety Authority was designated by Ontario Regulation No. 89/99 under the *Electricity Act, 1998*, and effective March 29th, 1999 an administrative agreement was entered into between the Minister of Consumer and Commercial Relations and the Electrical Safety Authority. This agreement defines the relationship between the Crown and the Electrical Safety Authority as a 'designated administrative authority' defined as:

> *"... a not-for-profit corporation without share capital incorporated under the laws of Ontario or Canada that operates in Ontario but that does not form part of the Government of Ontario, any other government or an agency of a government;"*

In addition, s.9(2) of the *Safety and Consumer Statutes Administration Act, 1996* states:

> *"Persons whom a designated administrative authority employs or whose services the authority retains under subsection (1) and members, officers, directors and agents of a designated administrative authority are not Crown employees and shall not hold themselves out as Crown employees."*

Therefore, the Electrical Safety Authority, as a designated administrative authority, does not fall within the definition of a "public office holder" for purposes of the *Lobbyists Registration Act.*

For more information, please contact:

Lobbyist Registrar
Lobbyists Registration Office
13th Floor
101 Bloor Street West
Toronto, Ontario, M5S 2Z7
Telephone: (416) 327-4053
Fax: (416) 327-4017
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APPENDIX " B "

LOBBYISTS REGISTRATION ACT, 1998

INTERPRETATION BULLETIN NO. 1

"THE PERIOD FOR WHICH THE RETURN IS FILED" AND "THE NEXT FOLLOWING SIX-MONTH PERIOD"

Pursuant to s.15 of the *Lobbyists Registration Act, 1998*, (hereinafter referred to as the "*Act*"), this interpretation bulletin is issued to provide a better understanding of "the period for which the return is filed" and "the next following six-month period" as found in section 6(3)10, 12, 13, and 14 of the *Act*, and applied to in-house organization lobbyists.

Section 6 of the *Act* requires that every six months, in-house organization lobbyists must disclose the subject-matters on which they are currently lobbying, and expect to lobby; whether they lobby and intend to lobby any ministry of the Crown, any agency board of commission of the government, a member of the Legislative Assembly or a member of his or her staff; and the communication techniques being used and expected to be used.

"During the period for which the return is filed" is the six-month period commencing the date of filing of the registration form, and "the next six-month period" is the six months following the present six-month period.

For more information, please contact:

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APPENDIX " C "

LOBBYISTS REGISTRATION ACT, 1998

INTERPRETATION BULLETIN NO. 2

"A SIGNIFICANT PART OF DUTIES"

Pursuant to s.15 of the *Lobbyists Registration Act, 1998* (hereinafter referred to as the "*Act*"), and *Ontario Regulation 722/98*, January 15, 1999 (hereinafter referred to as the "*Regulation*") this interpretation bulletin is issued to provide a better understanding of "a significant part of duties" as found in sections 5 and 6 of the *Act* and s. 5 and 6 of the *Regulation* and applied to in-house persons and partnerships and in-house organizations.

In-House Lobbyists (Persons and Partnerships)

Section 5(1) of the *Act* provides that an employee who, as a significant part of their responsibilities as an employee, attempts to influence the Ontario government or any agency, board or commission, on behalf of the employer who carries out commercial activities, must register within two months of becoming a lobbyist, i.e. when their lobbying constitutes a "significant part of their duties".

The in-house lobbyist must register when the lobbying activity for their employer begins and must renew the registration annually when lobbying is ongoing. New information must be reported within 30 days, together with any changes to information previously submitted, and when lobbying activities cease or the employee has ceased to be employed by the employer.

An annual renewal of the registration is required within two months after the end of the employer's financial year or, if the employer does not have a financial year, within two months of the commencement of the calendar year.

"Significant part of duties" is said by s.5 of the *Regulation* to occur when the accumulation of lobbying activities over a three-month period reaches the threshold of 20% for the individual employee's time. This definition applies to time actually spent lobbying and not creating research papers, making submissions to a committee of the Legislative Assembly which are a matter of public record, submissions to public office holders about the enforcement, interpretation or application of any act or regulation, submissions in direct response to written requests for advice or comments and routine constituency communications.

Assuming a five-day work week, over a three-month period, a commercial in-house lobbyist would have to lobby a minimum of four days per month to reach the 20% threshold.

In-House Lobbyists (Organizations)

Section 6(1) of the *Act* provides that an individual, employed by a non-profit organization, must be registered when a significant part of their duties is to attempt to influence the Ontario government, or agency, board or commission, on behalf of the organization, if these duties together with the lobbying duties of other employees would constitute a "significant part of the duties of one employee".

The most senior officer of the organization who is compensated for the performance of his or her duties, must register within two months of the organization meeting the definition of lobbying and must renew the registration within thirty days after the expiration of each six-month period after the filing of the previous return.

"Significant part of duties" is said by s.6 of the *Regulation* to occur when the accumulation of lobbying activities over a three-month period reaches the threshold of 20% for either an individual employee's time, or the combined times of more than one employee. This definition applies to time actually spent lobbying and not creating research

papers, making submissions to a committee of the Legislative Assembly which are a matter of public record, submissions to public office holders about the enforcement, interpretation or application of any act or regulation, submissions in direct response to written requests for advice or comments and routine constituency communications.

Assuming a five-day work week, over a three-month period, a lobbyist, or group of employees, would lobby a minimum of four days per month to reach the 20% threshold.

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Lobbyists Registration Office
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Email: *lobbyist.registrar@oico.on.ca*

10.0 Appendix 3: The Tupper Report: Integrity in Government in Alberta: Towards the Twenty First Century, January 1996

FILE COPY
DUPLICATE

INTEGRITY IN GOVERNMENT IN ALBERTA: TOWARDS THE TWENTY FIRST CENTURY

REPORT OF THE CONFLICTS OF INTEREST ACT REVIEW PANEL

PATRICIA NEWMAN
FRANCIS M. SAVILLE, QC
ALLAN TUPPER (CHAIR)

EDMONTON, ALBERTA
JANUARY 1996

***Conflicts of Interest Act* Review Panel**

Membership: **Allan Tupper, Ph.D., Chair**
Francis Saville, Q.C.
Patricia Newman

11 January 1996

Mr. Robert Clark
Ethics Commissioner
Province of Alberta
#410, 9925 109 St.
EDMONTON, Alberta
T5K 2J8

Dear Mr. Clark:

Please find attached the unanimous Report of the Conflicts of Interest Act Review Panel. The report recommends important changes to the conflicts of interest system in Alberta. When implemented, the Panel believes Alberta will have a conflicts of interest system that is second to none in Canada.

We will be available to discuss the Report with you at any convenient time.

Sincerely,

Patricia Newman

Francis M. Saville, QC

Allan Tupper (Chair)

c/o 410, 9925 - 109 Street, Edmonton, Alberta T5K 2J8 Phone: (403) 422-2273 Fax: (403) 422-2261

TABLE OF CONTENTS

Summary	2
Background	9
Introduction	13
Operating Principles and Assumptions	16
The Present Situation: The Conflicts of Interest Act	19
The Future: Elected Officials	23
Other Recommendations and Considerations: Elected Officials	33
Integrity in Government: Appointed Officials	45
Appointed Officials: The Present Situation	46
Appointed Officials: Recommendations	49
Other Provincial Institutions	59
The Control of Lobbyists in Alberta	62
Conclusions and List of Recommendations	64

SUPPLEMENTARY MATERIAL

Conflicts of Interest Act

Present Policy for "Senior Officials" (The Fowler Memorandum)

Code of Conduct and Ethics for the Public Service of Alberta

The Panelists

List of Interviews

REPORT OF THE CONFLICTS OF INTEREST ACT REVIEW PANEL

SUMMARY*

(*Readers are reminded that the precise recommendations and detailed explanations for them are contained in the Report)

The Conflicts of Interest Review Panel is a committee of three Albertans who, at the request of the Ethics Commissioner, Mr. Robert Clark, reviewed the **Conflicts of Interest Act** and related matters. The Panel was announced on 29 November 1995.

The Panel's recommendations are based on several principles. The most important of these are:

- The vast majority of public office holders in Alberta are persons of integrity.
- A public office, whether elected or appointed, is a position of **public trust** that must never be used for personal gain.
- Public officials in Alberta should face higher standards of conduct than at present.
- Government ethics are always controversial. Citizens differ about the standards to be applied. The Panel does not pretend to have all the answers.
- Public office holders must understand **as a basic condition** of holding public office that their conduct will be carefully scrutinized and evaluated by tough standards. They and their families will have less privacy.

- Conflicts of interest rules must not be so complex that they deter persons from seeking public office.
- Effective conflicts of interest systems outline clear standards and apply these standards to the appropriate public office holders. They are not based on long lists of prohibited actions.

Major changes are required if Alberta is to have a conflicts of interest system that meets public expectations, stands the test of time and provides the province with guidelines that are second to none in Canada. The Panel recommends the following major changes:

- the **Conflicts of Interest Act** and other relevant rules and regulations should be replaced by a new law - **the Integrity in Government and Politics Act.** The new Act would have three dimensions - one for Members of the Legislative Assembly, one for important appointed officials and one that establishes a lobbyist registration process.
- Basic principles in the **Conflicts of Interest Act** should be retained in the **Integrity in Government and Politics Act.** These principles are: a system of public disclosure, an independent Commissioner to interpret the Act and a clear set of obligations under which public office-holders operate.
- Two new principles will be found in the **Integrity in Government and Politics Act.** First, public office holders will have to avoid conflicts of interest and "apparent" conflicts of interest. This is a higher standard than is presently applied. Second, public office holders will be obliged to act impartially in the performance of their duties. An "impartiality clause"

will permit investigation of conduct that may be unethical even though it does not involve financial conflicts of interest.

- The **Integrity in Government and Politics Act** will apply to appointed officials. For the first time, influential civil servants will work under a conflicts of interest system established by provincial law. More officials than at present will be covered. The Panel recommends a unique system for determining which officials will be covered by the **Integrity in Government and Politics Act.**
- The **Integrity in Government and Politics Act** should establish a lobbyist registration process. Such a system will make government in Alberta more transparent and accountable.

These are major changes. They are necessary changes if Albertans are to have a conflicts of interest system in which they have full confidence.

Other Proposals for Elected Officials

- Members of the Legislative Assembly who chair Standing Policy Committees and who supervise important provincial government agencies wield power. Under the **Integrity in Government and Politics Act,** they will work under the restrictions imposed on Ministers and the post-employment guidelines for former Ministers.
- The Leader of the Official Opposition should be subject to the same restrictions as Members of the Executive Council and former Ministers.

- The section in the **Conflicts of Interest Act** that deals with Members' contracts with government is too complex. It must be clarified.
- Ministers are presently prohibited from owning "publicly-traded securities". We recommend that they be prohibited from owning a broader range of financial instruments.
- Members must face a clear obligation to find out the financial status and interests of their spouses, minor children and associates. The present section is weak. If public disclosure is to be meaningful, Members must find out the facts.
- When Members withdraw from their legislative duties because of conflicts of interest, the circumstances of such withdrawals should be part of the public record.
- The present 6 month "cooling off" period should be extended to 12 months.
- The present section on the receipt of gifts and benefits by Members is adequate. It is similar to that used by other governments. The onus is on Members to get advice from the Ethics Commissioner about the definition of gifts and benefits and the circumstances under which they can be accepted.
- Income, gifts and benefits from a political party are subject to the Act.

- The disclosure forms used by the Ethics Commissioner should be regularly reviewed. They should make clear to Members their obligations under the **Act.**
- Consideration should be given to separating the Office of the Ethics Commissioner and the Office of the Access to Information and Privacy Commissioner.
- The educational activities of the Office of the Ethics Commissioner should be expanded. The Commissioner should meet with each caucus twice a year. Candidates for elected office should know their obligations under the **Act.**
- Members' unpaid taxes should be publicly disclosed.
- The **Integrity in Government and Politics Act** must be much more "reader friendly" than the present Act.
- The **Integrity in Government and Politics Act** should be reviewed every 5 years by a committee of the Legislative Assembly.

Appointed Officials

- The Code of Conduct and Ethics for the Public Service, the rules that apply to most provincial civil servants, must be updated.
- In addition to the obligations imposed by the Code, a group of appointed officials, called "policy officials", will be placed under a section of the **Integrity in Government and Politics Act.** They will face tough guidelines. "Policy officials" means those presently designated as "senior officials",

assistant deputy ministers, executive assistants, senior staff in the Office of the Leader of the Official Opposition and a further group, who in the view of their Minister and the Premier, wield enough policy or administrative influence to warrant inclusion.

- The financial disclosures of "senior officials" and their spouses and associates should be made available to the general public.
- "Policy officials" should be subject to a one year "cooling off period". They would be prohibited from undertaking certain lobbying and from taking employment with organizations with which they worked closely in the final year of their employment.

The Registration of Lobbyists

Lobbyists in Alberta politics should be required to register their activities and to work under standards contained in the **Integrity in Government and Politics Act**. Government would be more transparent and accountable as a result. The Government of Canada's recently updated **Lobbyist Registration Act** is a useful model for Alberta.

A Final Consideration

The **Integrity in Government and Politics Act** will apply to many elected and appointed officials. But many persons will still fall outside its scope. For example, new government organizations like the regional health authorities, the Alberta Science and Research Authority and the Alberta Economic Development Authority involve Albertans who are not public office holders. Some of them are volunteers who give generously of their

time to serve the public interest. But by the same token, they may be influential in decision-making and may have access to important information. The Government of Alberta also provides extensive funding to school boards, universities and colleges and other organizations. Many of these organizations operate at an "arm's length" from the Government. They also receive substantial public funds and are instruments of policy. Influential persons in the "quasi-public" sector noted above should work under conflicts of interest rules that are fair to the Albertans involved and that promote the integrity of public institutions. As soon as possible, the Government should issue a detailed policy statement that covers these organizations and the people that serve in them.

REPORT OF THE CONFLICTS OF INTEREST ACT REVIEW PANEL

Background

The Conflicts of Interest Act Review Panel was established after Premier Klein requested of Mr. Robert Clark, the Ethics Commissioner, that he ask a group of Albertans to review the Act. Premier Klein's particular concern was that the issue of higher standards of ethical conduct for public officials be addressed in a forthright manner. Mr. Clark agreed to the request. He selected the Panel and established its terms of reference. On November 29, 1995, the Panel was announced and began its deliberations.

The Panel's terms of reference are:

1. To assess the adequacy and effectiveness of parts 2, 3, and 4 of the present *Conflicts of Interest Act* , Chapter C-22.1 of the 1991 Statutes of Alberta.
2. To consider specifically what are appropriate standards regarding financial dealings for Members of the Legislative Assembly, senior officials, and their respective spouses, and to recommend higher standards where the Review Panel deems them to be appropriate. In considering appropriate standards, the Review Panel may consider conflict of interest legislation or codes in other Canadian jurisdictions.
3. To assess the appropriateness, adequacy, and effectiveness of the conflicts of interest guidelines for senior officials as set out in the memorandum

from the Honourable Richard Fowler, Minister of Justice and Attorney General, dated February 3, 1993.

4. To make recommendations with respect to proposed amendments to the *Conflicts of Interest Act*, proposed regulations or legislation for senior officials, and practices or any other related matter employed by the Office of the Ethics Commissioner.
5. The Review Panel is to report to the Ethics Commissioner by December 18, 1995, and the report will be presented to the Minister of Justice and Attorney General. The report will be released publicly.

The Panel reviewed the suitability and effectiveness of the **Conflicts of Interest Act** for the future. Our broad terms of reference allowed us to pursue all relevant questions. We asked hard questions - is the present conflicts of interest system effective as Alberta moves toward a new century? What changes are required in light of controversy about the Act, several years experience with it and changes to the role of government in Alberta in an era of downsizing, contracting out and budget cuts? How can the integrity of government be enhanced without impeding its proper functioning?

In preparing its report, the Panel studied a selection of the literature on government ethics. We carefully reviewed Alberta's law and regulations. We examined the situation in several other jurisdictions notably British Columbia, Ontario and Canada. These jurisdictions hold lessons for Alberta. Ontario and British Columbia have substantially revised their conflicts of

interest legislation in recent years. As we write in early 1996, Parliament is examining the standards of conduct for its Members through the vehicle of a joint committee of the Senate and House of Commons. In 1995, Parliament substantially amended the **Lobbyist Registration Act**.

The Panel interviewed senior officials in the Government of Alberta, the Ethics Commissioners of Alberta, British Columbia and the Government of Canada, staff in the office of the Ethics Commissioner and the Premier of Alberta, Hon. Ralph Klein. We thank these busy people for assisting our work and in many cases for rearranging their schedules to meet with us. (A list of these meetings is appended to this report). Much of our work involved deliberation and debate among the Panel Members. Our report is a unanimous one.

The Liberal Party of Alberta, the Official Opposition in the Legislative Assembly of Alberta, was invited to meet with us. Mr. Grant Mitchell, its leader, originally accepted our invitation but after caucus deliberations decided not to participate in our work.

We did not conduct public hearings. But with our report in hand, further debate will occur in the Legislative Assembly, in the media and, we hope, in conversations throughout Alberta. We opted for a broad approach to the topic. We have recommended **major** changes to the way public business is done in Alberta. We believe we have recommended a conflicts of interest system for Alberta that will meet public expectations and stand the test of time.

Our timetable precluded a report with detailed solutions to every issue and precisely worded solutions in every instance. But in every case, we provide a clear definition of problems as we saw them and a solution. To the Panel's mind, concrete action can occur **provided the political will exists.** We see no major problems in translating our recommendations into good legislation.

Introduction

The ethical conduct of public officials, both elected and appointed, is a fundamental concern in democracies. Over the past decade, debate has occurred in provincial, municipal and national politics about proper standards of public conduct and the best ways to attain these standards. Albertans share these concerns as strongly as other Canadians.

Citizens now demand very high standards of ethical conduct from those who govern them. They are correct to do so. The conduct of public officials has profound consequences for the legitimacy of government. Effective policy-making is hard to undertake unless citizens and public officials are linked by bonds of mutual trust and respect.

In Alberta, a sea change occurred in the province's approach to political ethics with the proclamation of the **Conflicts of Interests Act** in 1993. **For the first time,** an act of the Legislative Assembly established a conflicts of interest system for all Members. It replaced a complex set of informal guidelines and rules. The Legislature elected in the provincial general election of 15 June 1993 is the first in Alberta's political history to operate under a conflicts of interest law.

This Panel supports the democratic principles embodied in the **Conflicts of Interest Act**. These principles should form the basis of the substantially revised legislation that we propose.

The Panel also believes that there are significant weaknesses in the existing conflicts of interest system for public office holders, both elected and appointed, in Alberta. Higher standards are required. We propose major changes which, when implemented, will provide Alberta with ethical guidelines for public office holders that will stand the test of time. Our proposals, when implemented, will impose demanding standards on a large number of influential public officials. They will be second to none in Canada.

The Panel believes its recommendations will make government in Alberta more transparent and more accountable. **Seen together, they constitute a major "Integrity in Government" package for the consideration of Albertans.** Our basic recommendations are as follows:

BASIC RECOMMENDATIONS

1. **The Conflicts of Interest Act and those regulations, guidelines and codes for appointed officials should be consolidated in a single piece of legislation called the Integrity in Government and Politics Act. The new Act would have three basic components - one for elected officials, one for appointed officials and one that applies to lobbyists in Alberta politics.**
2. **The proposed Integrity in Government and Politics Act would embrace several of the principles now found in the Conflicts of Interest Act. These include: a system of public disclosure of the financial interests of officials, a clear set of obligations and duties for public office holders and an independent Commissioner to interpret and administer the Act.**

3. The Integrity in Government and Politics Act would embrace two new principles. First, public office holders, both elected and appointed, would be expected to avoid conflicts of interest and "apparent" conflicts of interest. Second, under the proposed Integrity in Politics and Government Act, public office holders would be expected to act impartially in the performance of their duties.
4. Influential civil servants and advisors in the Government of Alberta should operate under substantially revised and strengthened conflicts of interest rules. They would be under a tough provincial statute for the first time. The Panel also recommends a new system for deciding which officials will be subject to the proposed Integrity in Government and Politics Act. Civil servants not covered by the Integrity in Government and Politics Act will continue to work under the Code of Conduct and Ethics for the Public Service. The Code would be made a regulation under the Integrity in Government and Politics Act.
5. The Integrity in Government and Politics Act will provide for the registration of lobbyists. Such a system will make government more transparent and accountable. Citizens are entitled to know who influences government and the way in which influence is brought to bear.

Operating Principles and Assumptions

The Panel proceeded from several principles and assumptions. We feel that it is important to outline these briefly here so that Albertans can understand the thinking that underpins our recommendations.

- The vast majority of public officials in Alberta are persons of integrity who undertake public office to promote the public interest.
- A public office, whether elected or appointed, is a position of **public trust**. Such a position must **never** be abused for personal gain.
- Conflicts of interest rules must never be so complex or onerous that they deter citizens from seeking public office.
- Higher standards of conduct are required for public office-holders in Alberta.
- Ethical conduct in government and politics will always be the subject of legitimate debate. Controversy is inevitable about the standards employed and their interpretation in particular cases. The Panel does not claim to have all the answers. It is wary of those who think they do.
- Laws designed to promote integrity in government are essential to the quality of democracy. But they are not, and must not be seen to be, substitutes for an alert, informed public. As the 1990 report of Chief Judge Wachowich put it: "However admirable a conflicts of interest system might be, it could not reform a corrupt government or protect an apathetic public."

- As a basic condition of holding public office, public officials must accept that their conduct will be carefully scrutinized and tested against demanding standards. Such standards will be higher than those expected of women and men in other walks of life. They will cause a loss of privacy for office holders and their families.
- An effective conflicts of interest regime outlines clear standards of conduct. Those in public office, and persons considering elected or appointed public office, must know **in advance** the conduct expected of them, their families and their associates. Those considering public office must seek full information about their obligations and duties.
- The Panel rejects an approach that specifies a long list of prohibited conducts. This "thou shalt not" approach characterizes many conflicts of interest systems in the United States. We believe that effective ethical guidelines stress broad principles that are then interpreted in the face of "real world" situations. Rather than proposing new restrictions and prohibitions, the Panel has concentrated on **standards** and on ensuring that the **Integrity in Government and Politics Act** covers the **appropriate group** of public office holders.
- Effective conflicts of interest systems require sanctions and an enforcement capacity. They also requires education and counseling so that wrongdoings and errors of judgement are **prevented**. We endorse the existing regime in Alberta which obliges the Ethics Commissioner to undertake preventative action, to educate and to counsel public officials

about their obligations. Such work is very important yet it is unknown to the public.

The Present Situation: The Conflicts of Interest Act

The **Conflicts of Interest Act** is an important law. It replaced informal guidelines for ministers, moved some rules from the **Legislative Assembly Act** and outlined obligations for Members. The Act's basic principle is that Members of the Legislative Assembly must not allow their private financial interests to influence the conduct of public business. The Act imposes obligations on Members. The following actions by Members are breaches of the Act:

1. taking part in a decision in which a Member knows that the decision might further a private interest
2. using the Member's office or powers to influence or seek to influence a decision of the Crown to further a private interest of the Member
3. using or communicating information not available to the public to seek to further a private interest.
4. accepting gifts, fees or other benefits that are connected directly or indirectly with the performance of the Member's office.
5. holding certain offices while they are Members or being involved in contracts or payments with the Crown.

The Act places additional restrictions on Members of Executive Council, the Cabinet. Ministers are prevented from engaging in certain business and professional activities and, subject to certain exceptions, from owning or from having "beneficial interests" in publicly-traded securities. Such securities

must be divested or placed in a blind trust. With the approval of the Ethics Commissioner, they may be retained. The employment opportunities and lobbying activities of former Ministers are restricted for six months after they leave public office.

The **Conflicts of Interest Act** rests on the principle of **public disclosure** of the financial interest of Members of the legislature, their spouses, their minor children and private corporations controlled either by the Member or by the Member's spouse or minor children. Members are obliged to file with the Ethics Commissioner statements about their personal and family's financial assets, liabilities and interests, income received in the preceding 12 months and expected in the next 12 months and fees, gifts and benefits exceeding $200 from the same source in any calendar year.
Such facts are publicly disclosed by the Ethics Commissioner, although the value of holdings is not made public and certain classes of information are not released. The release of such information creates an informed public which operates as a check on Members' activities.

The Panel feels that public awareness of these provisions and their consequences is not high enough. This is one of the reasons we recommend that the educational activities of the Ethics Commissioner be expanded. The **Conflicts of Interest Act** makes Members of the Legislative Assembly **publicly responsible** for the financial dealings of their family members. This principle has many consequences for women and men as they consider entering public life and for their relationships after they enter politics or government service.

We again urge those considering public office to consider carefully these consequences.

The Act establishes obligations on Members which, when breached, allow the Ethics Commissioner to recommend sanctions to the Legislative Assembly. The Ethics Commissioner is an officer of the Legislature who is independent from the Government. The Act gives considerable discretion to the Commissioner whose must interpret the Act on a daily basis. Many of the provisions of the Act can be eased by the Ethics Commissioner in particular circumstances. The assumption is that the obligations and restrictions imposed on Members might not make sense if applied without consideration of special circumstances. Finally, and this point merits emphasis, the Act covers a narrow terrain. It deals only with the financial interests of individual MLAs as these relate to government activities. It does not cover the broad range of ethical matters that make up integrity in government.

The **Conflicts of Interest Act** is an important law. It rests on democratic principles that the Panel supports. The Act asserts that there must be as clear a separation as possible between public duties and private interests, it prohibits certain activities as unacceptable, and it stipulates that an independent officer of the Legislature should interpret and enforce the Act. It requires that the public have access, through public disclosure, to facts about the personal finances of Members of the Legislative Assembly.

The Panel accepts these principles and sees them as key elements of a proposed new **Integrity in Government and Politics Act**. We also conclude,

however, that the Act should be strengthened in the context of a new **Integrity in Government and Politics Act**.

The Future: Elected Officials

The Panel recommends that an **Integrity in Government and Politics Act** embrace the following features that are not found in the present legislation. When implemented, our recommendations will establish higher standards of conduct for elected officials.

Recommendation 1: The Integrity in Government and Politics Act should begin with a clear statement of purpose that indicates, to Members of the Legislative Assembly, appointed officials and the citizens of Alberta, the ethical obligations of public office holders.

- The **Integrity in Government and Politics Act** must begin with a clear statement of the fundamental principles which it represents. The present Act has no such statement of purpose. The statement of purpose will be a constant reminder to elected officials of the importance of their roles and of their obligations to the citizens of Alberta. Such a statement of principles is contained in Ontario's recently revised **Members' Integrity Act** and the Government of Canada's Conflict of Interest and Post-Employment Code for Public Office Holders.

  Ontario's statement of purpose is not perfect. For example, it does not apply to appointed officials. But **for purposes of illustration only**, it is included here:

"It is desirable to provide greater certainty in the reconciliation of the private interests and public duties of Members of the Legislative Assembly, recognizing the following principles:

1. The Assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge in relation to many aspects of life in Ontario and if they can continue to be active in their own communities, whether in business, in the practice of a profession or otherwise.

2. Members' duty to represent their constituents includes broadly representing their constituents' interests in the Assembly and to the Government of Ontario.

3. Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members.

4. Members are expected to act with integrity and impartiality that will bear the closest scrutiny."

Recommendation 2: The Integrity in Government and Politics Act should state that Members of the Legislative Assembly and appointed officials will avoid both real and "apparent" conflicts of interest.

- the **Integrity in Government and Politics Act** must incorporate the idea of an "apparent conflict of interest". Such a clause exists in British Columbia's legislation where it permits investigation and response to a range of perceived misconduct. It will significantly raise the standard of conduct expected of Members of the Legislative Assembly and appointed officials. The following are the relevant sections of British Columbia's **Members' Conflict of Interest Amendment Act, 1992:**
- 2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or the function or in the exercise the power there is the opportunity to further his or her private interest.
- 2 (2). **For the purposes of this Act, a member has an apparent conflict of interest where there is as reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest".** (emphasis ours)
- 3. A member shall not exercise an official power or perform an official duty or function if the member has a conflict of interest **or an apparent conflict of interest.** (emphasis ours)

The "appearance" test does not permit fishing trips or harassment of Members. An apparent conflict of interest must be one that would be seen by "a reasonably well informed person".

The **Conflicts of Interest Act** already applies the test in several sections. For example, Section 2C (1) now prohibits Ministers from engaging in business and professional activity if such activity "creates or **appears** to create a conflict between a private interest of the Minister and the Minister's public duty." (emphasis ours). Moreover, the Code of Conduct and Ethics for the Public Service of Alberta, the rules that now apply to **all provincial civil servants regardless of rank,** also applies the "appearance standard".

The Panel recommends that the "appearance standard" be applied as a principle that governs the entire **Integrity in Government and Politics Act.**

We are at ease in recommending a higher standard for Members of the Legislative Assembly and for a group of appointed officials. Their conduct should be evaluated by rigorous standards.

Recommendation 3: The Integrity in Government and Politics Act should impose an obligation on Members of the Legislative Assembly and appointed officials to act impartially on behalf of all Albertans. The present Act does not have such an obligation.

- The Panel recommends that the proposed **Integrity in Government and Politics Act** contain a clause that imposes on Members the duties of impartiality and fairness in their public dealings. An "impartiality clause" would extend the **Integrity in Government and Politics Act** into areas that

the **Conflicts of Interest Act** does not cover. Members and appointed officials would be expected to discharge their duties fairly and with due regard to proper process. They could be found in breach of the **Integrity in Government and Politics Act** for employing unethical means to further their ends.

The rationale for this clause is not theoretical. Most citizens probably assume that such an obligation is at the heart of the present Alberta Act. But it is not. This weakness in the present **Conflicts of Interest Act** has already been noted in an investigation under Alberta law, undertaken under special circumstances, by the present British Columbia Conflict of Interest Commissioner, Mr. Ted Hughes. In investigating matters surrounding the Alberta Special Waste Management Corporation, Mr. Hughes noted that there was no capacity under the **Conflicts of Interest Act** to cope with unethical behaviour that did not involve a financial conflict of interest.

An "impartiality clause" will not impede the normal processes of democratic government or the exercise of legitimate political influence. Section 5 of the present **Conflicts of Interest Act** now establishes that the Act is not meant to interfere with activities of Members on behalf of their constituents. **Such a clause must be retained in the Integrity in Government and Politics Act.**

An "impartiality clause" will remind Members and officials that their duties and obligations extend beyond the avoidance of financial conflicts

of interest. It will remind them that they are public servants in the true sense of the word. They are obliged to govern on behalf of all citizens and to observe high standards in the way they conduct public business.

The **Integrity in Government and Politics Act** could employ language like that used in the Government of Canada's Conflict of Interest and Post-Employment Code for Public Office Holders: "Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence in the integrity, objectivity and impartiality of government are conserved and enhanced". A similar section is found in the law governing public office holders in the Northwest Territories: "Each Member shall perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member".

Recommendation 4: Under the proposed Integrity in Government and Politics Act, the obligations now imposed on Members of Executive Council and the restrictions now imposed on former Ministers should be extended to those Members who chair Standing Policy Committees and/or who chair or supervise significant agencies of the Government of Alberta.

- The **Conflicts of Interest Act** now imposes restrictions on the activities of Ministers that are not imposed on other Members. Under Section 6, it also imposes restrictions on former Ministers after they leave Cabinet.

The logic is obvious - Ministers wield significant policy-making and administrative power. Such power must be employed on behalf of all citizens.

Under the revised committee system established by the present government, "backbenchers" chair Standing Policy Committees. In this role, they are important players in decision-making. They are different from ordinary Members. Their positions may give them access to information that is not available to other Members. Some backbenchers also chair important provincial government agencies, although they do so under the direction of a Minister. The line between a Minister and a backbencher is blurred.

The Panel recommends that those sections of the **Conflicts of Interest Act** bearing on Members of the Executive Council be extended to Members of the Legislative Assembly who chair Standing Policy Committees or who chair provincial agencies.

The Panel deliberated at length about this important point. It is a complex matter that raises questions about where power lies in government. It also raises another question - should Members continue to work under different rules as they now do? Or should all 83 of them be subject to a single set of obligations and restrictions?

One response is to extend the restrictions on Ministers to all Members of the legislature. This response has the virtue of simplicity and uniformity of application. It would be a clear statement that all Members would be

expected to establish even clearer lines of separation between their public offices and their private financial and business dealings. All MLAs would be under the same obligations regardless of their party or their place in the hierarchy of power.

After considerable discussion, we decided against this approach. We worried that the imposition of Ministerial obligations on all Members would be too onerous for backbenchers on both sides of the house. For example, Section 4 of the **Conflicts of Interest Act** now prohibits ministers from engaging in certain forms of professional and business activity, although such restrictions can be eased by the Ethics Commissioner. It also limits the employment opportunities of former Ministers for a six month period after they leave office.

The imposition of such restraints on all Members is not required. Their behaviour will continue to be scrutinized through public disclosure. And when the **Integrity in Government and Politics Act** is passed, all Members will face significantly higher standards. They will have to avoid both real and "apparent" conflicts of interest. They will be obliged to act impartially in the performance of their duties.

The extension of Ministerial obligations to all Members would have a significant indirect consequence. It would be a major step toward defining membership in the Legislative Assembly as a full time job. Perhaps such a policy is desirable for the quality of democracy. But it is a significant change in our political traditions. It should be recognized as such.

Amendments to the conflicts of interest system should not be an indirect vehicle for a major policy change.

We urge Albertans to think carefully about these issues. For now though, we believe the more stringent Ministerial obligations should be extended only to Members who chair Standing Policy Committees or significant agencies of the Government of Alberta. Given the relatively small number of Members involved, the Members subject to the Ministerial rules could easily be determined by the Premier after discussion, if necessary, with the Ethics Commissioner.

Recommendation 5: Under the Integrity in Government and Politics Act, the Leader of the Official Opposition should operate under the responsibilities and obligations imposed on Members of Executive Council, those other Members of the Legislative Assembly noted in Recommendation 4 and former ministers.

- The position of Leader of the Official Opposition is significant enough to demand that she or he be subject to more stringent rules than other Members. The Leader is the object of pressure group influence. In a competitive party system as an election nears, such influence can be strong. We recommend therefore that the Leader of the Opposition be subject to rules comparable to those imposed on Members of Executive Council and those other Members of the Legislature noted above.

Summary

The Conflicts of Interest Act Review Panel is recommending major changes to the statutory framework for elected office holders in Alberta. Without any reduction of existing obligations and duties, we propose the following major changes:

1. Elected officials in Alberta must face a higher standard. They must avoid conflicts of interest **and** the appearance of conflict of interest as perceived by a reasonably well informed citizen.
2. An "impartiality clause" should be inserted into the **Integrity in Government and Politics Act**. Such a clause will permit investigation and censure of conduct that is unethical but which may not involve financial conflicts of interest. This obligation is not found in the present Act.
3. The **Integrity in Government and Politics Act** should contain a clear statement of purpose so that public office holders and Albertans know the democratic principles that it represents.
4. Chairs of Standing Policy Committees, Members who supervise important provincial agencies but are not Members of Executive Council, and the Leader of the Official Opposition should be subject to the same restrictions as Members of Executive Council. They would also be subject to the restrictions on "former Ministers".

Other Recommendations and Considerations: Elected Officials

In addition to the new principles outlined above, the Panel proposes changes to several sections of the existing **Conflicts of Interest of Act**. Without change, these sections should not be transferred to the **Integrity in Government and Politics Act.**

Recommendation 6: The Integrity in Government and Politics Act should employ a clear definition of the financial instruments in which Ministers and designated others should not be involved.

- Section 1 (1) j of the Act defines publicly-traded securities. It is an important definition that provides the basis for a prohibition under which Members of Executive Council operate. This definition is too narrow. Ontario's **Members' Integrity Act** has a better definition. Section 11(1) of that Act states: "A member of the Executive Council shall not hold or trade in securities, stocks, futures or commodities". This wording is clear and broad in sweep. It should be adopted in the **Integrity in Government and Politics Act.**

Recommendation 7: The present section on Members' contractual dealings with governments is too complex. It requires clarification and simplification especially as "contracting out" of government services is now a major part of public management in Alberta.

- Section 8 of the Act deals with Members' contracts with governments. This section is complex to the point of incomprehensibility. Ontario's **Members' Integrity Act** is clearer. Section 7 of the Ontario act states that Members must not knowingly contract with agencies of the Government of Ontario. It tersely notes some qualifications. Section 8 of the **Conflicts of Interest Act** should be redrafted so that its provisions and intent are clear. Governments have always entered into contracts with firms and individuals. This is so because many goods and services required by governments cannot be "produced" by governments themselves. But governments now also **deliver** public services through contracts with private and non-profit agencies. "Contracting out" is extensively practiced in Alberta. It brings public officials into new relationships with the private sector. The extent of "contracting out" makes it essential that the rules governing contracts between Members and agencies of the Government of Alberta be clarified. The private business and professional interests of Members must not be mingled with the processes of the privatization and contracting out.

Recommendation 8: The present obligation on Members, outlined in Section 12 of the Conflicts of Interest Act, to report the financial status of their spouses and minor children "so far as is known to the Member" is too weak. The Panel therefore recommends that Members be obliged to

make "reasonable efforts'" to ascertain the facts. Otherwise public disclosure cannot be effective.

- Section 12 of the **Conflicts of Interests Act** deals with disclosure statements to the Ethics Commissioner. At present, the Member is obliged to report the assets, liabilities and financial interests of his/her spouse, minor children and private corporations controlled by them. The Member is obliged to report these facts "so far as known to the Member".

  This section is weak. Public disclosure of information about Members' financial dealings is at the heart of the **Conflicts of Interest Act**. Disclosure must be full, complete and accurate. We recommend that section 12(a) of the Act be altered so that Members face an **obligation** to determine and understand the financial dealings of their spouses and minor children. We suggest the following terminology: "so far as known to the Member after she or he has made reasonable efforts to discover them,".

  Occasional circumstances may arise when a spouse refuses to co-operate. But clear statutory direction will outline to public office holders the obligations they operate under. If such obligations are not understood and acted upon by Members, the basic principle of public disclosure is weakened.

Recommendation 9: When Members withdraw from their legislative duties because of conflicts of interest or apparent conflicts of interest, the

general circumstances and times of such withdrawals must be part of the public record.

- As a safeguard of the public interest, section 2(2) of the **Conflicts of Interest Act** obliges Members to withdraw from deliberations when they are in a conflict of interest. In British Columbia, Members face a similar obligation. But there is a big difference. In British Columbia, the withdrawal of a member and the circumstances of such a withdrawal are part of the public record. Members must alert the Clerk of the Legislative Assembly to the general circumstances under which they have withdrawn from debate or committee work. Such information is passed on to the Office of the Ethics Commissioner where it is available for public scrutiny.

  The Panel recommends that Alberta's revised legislation contain an amendment comparable to British Columbia's. Albertans should know when and why Members of the Legislative Assembly withdraw from their duties because of conflicts of interest or apparent conflicts of interest. The Panel also notes that Alberta's **Municipal Government Act** presently imposes such on obligation on those officials who are subject to it. It is certainly not too onerous an obligation for Members of the Legislature.

Recommendation 10: The present restrictions on the activities of former Ministers are legitimate safeguards of the public interest. The existing six month "cooling off" period is too short. It should be twelve months.

- Part 6 of the Act broke new ground in Alberta when it prohibited former Ministers from lobbying the provincial government under certain circumstances or from taking employment with organizations with which he or she had "significant official dealings" in the year **preceding** departure from public office. The Act prohibits certain activities for **six months** after the former Minister leaves office.

  This time is often referred to as a "cooling off" period. It exists so that citizens have confidence that former Ministers do not have, or are not seen to have, an unfair advantage over others in influencing government. They have to hang up their skates for six months and refrain from lobbying parts of government. By the same token, the impartiality of their offices would be challenged if they immediately accepted employment with an organization with which they had been working closely while a Minister.

  The Panel views such restrictions as legitimate protections of the public interest and the integrity of government. It also believes that the present six month "cooling off period" is too short. At the same time, the two year period in British Columbia and the Government of Canada is too long. We therefore recommend a one year "cooling off " period. Chief Judge Wachowich made a similar recommendation in 1990 in his report that recommended conflicts of interest legislation in Alberta.

Recommendation 11: Members must seek advice from the Ethics Commissioner when they are uncertain about what constitutes a gift, fee or other benefit or about the circumstances in which a gift, fee or benefit may be accepted. The onus is on them. Other Canadian governments deal with gifts in a manner similar to Alberta. No obviously superior policy alternative presents itself, although other jurisdictions, notably British Columbia and Ontario, employ clearer statutory language.

- The Multi-Corp. investigation raised questions about the adequacy of the present Act's coverage of gifts and benefits. The Panel reviewed this matter. Alberta's Act, in section 7, deals with gifts in essentially the same way as British Columbia, Ontario and Canada. The Act specifies that a Member breaches the Act if he/she or the Member's spouse or minor child accepts "a fee, gift or other benefit that is connected directly or indirectly with the performance of the Member's office." The Act further specifies that this general rule does not apply to gifts received as "an incident of protocol or of the social obligations that normally accompany the responsibilities of the Member's office". Such gifts must not exceed the value of $200 in a calendar year. Alternatively, the Member can apply to the Ethics Commissioner for permission to retain such a gift. The Commissioner must be satisfied that the retention of such a gift or benefit raises "no reasonable possibility" of a conflict of interest.

The Panel sees no need for a statutory change in the provisions about gifts. The Act provides a broad definition when it mentions "a fee, gift or other benefit". It provides a bit of flexibility in the circumstances under which the receipt of gifts, fees or an other benefit are acceptable for a public office-holder. The Act makes no explicit mention of the source of gifts. We assume this silence means that the rules apply to gifts **from any source**.

The experience of other Canadian jurisdictions offers no panacea or superior model. Other governments use a broadly similar approach - a general prohibition against the receipt of gifts and benefits subject to a recognition that public office holders may sometimes receive gifts in the conduct of public business.

Other jurisdictions express their policy more clearly than does the **Conflicts of Interest Act**. The Ontario **Members' Integrity Act** is a model. Members should be cautious. As a general rule, they should refuse gifts and other benefits as is the intent of the Act. When they are uncertain, they must get advice from the Ethics Commissioner.

Recommendation 12: Income, gifts or other benefits received from a political party are covered by the Act and must be reported and disclosed. Leaders of political parties must be especially mindful of their obligations in this regard.

- The Premier and the Leader of the Official Opposition are also leaders of political parties. In a legislature with more than two parties, other Members will also be party leaders. In their capacities as party leaders, they may receive income and/or benefits from their party in recognition of their onerous positions. The Act is silent about such a situation. As already noted, it is silent about the source of gifts and income generally. We have no evidence that problems are arising. Indeed, Premier Klein's public disclosure statement now shows income from the Progressive Conservative Association of Alberta. This is as it should be.

  For the record, our view is a straightforward one. Income, benefits or gifts **from political parties** must be disclosed to the Ethics Commissioner and, subject to any limits in the Act, through that Office to the public where applicable.

Recommendation 13: The Integrity in Government and Politics Act should be reviewed by a committee of the Legislature every five years.

- The **Integrity in Government and Politics Act**, should be reviewed by a committee of the legislature at least once every five years from now on. A mandatory review acknowledges the importance of the Act and recognizes the need to assess it regularly in light of changing public expectations, alterations to the role of government, and changes in the responsibilities

of Members. The recent creation of Standing Policy Committees is a good example of the last point.

Recommendation 14: Consideration should be given to separating the Offices of the Ethics Commissioner and the Office of the Access to Information and Privacy Commissioner.

- Consideration should be given to the question of whether the duties of the Ethics Commissioner and the Access to Information and Privacy Commissioner should be undertaken by the same person. When the **Integrity in Government and Politics Act** is passed, the work load will probably be too demanding for a part-time Commissioner. As well, the functions of the two Offices may not be compatible. Information about Members could be sought under the Access to Information and Privacy Act.

Recommendation 15: The educational activities of the Office of the Ethics Commissioner should be enhanced. The Commissioner should meet with each caucus at least twice annually. Candidates for elected office should be informed of their ethical obligations when they are nominated or even earlier if possible.

- The educational role of the Ethics Commissioner should be enhanced. The Ethics Commissioner should continue to work closely with party caucuses

as he/she is obliged to do under Section 40 (1) of the Act. Such organizations must make efforts to keep up to date on changes in legislation elsewhere, Members' obligations under the Act and public expectations. Each caucus should meet at least twice annually with the Ethics Commissioner to discuss matters of mutual concern. Steps should also be taken to ensure that candidates for election to the Legislative Assembly are informed of their obligations under the **Integrity in Government and Politics Act** when they file nomination papers.

Recommendation 16: Members' unpaid taxes should be publicly disclosed.

- Under section 14(4) e of the **Conflicts of Interest Act**, Members' unpaid taxes are not publicly disclosed. We see no reason for such an exemption. Elected officials, of all citizens, should pay their taxes promptly. We can envision occasional circumstances where taxes are unpaid because they are in dispute. This could be noted in the disclosure statement. But it is not a legitimate rationale for non-disclosure.

Recommendation 17: The disclosure forms used by the Office of the Ethics Commissioner must be continuously reviewed and updated. The forms should clearly state the Members' obligations and the purposes served by the information being requested.

The Multi-Corp. investigation revealed deficiencies in the forms employed by the Office of the Ethics Commissioner. The Panel reviewed the revised forms. We are satisfied that they are now adequate to the task. The forms employed by the Office of the Ethics Commissioner should be continuously reviewed for their appropriateness. Where possible and relevant, they should embrace the relevant statutory obligations without becoming encumbered by legal text.

Recommendation 18: The legitimate costs of Members for complying with the Act should be paid for by public funds.

Members of the Legislative Assembly who incur legal, accounting or other legitimate expenses when complying with the **Integrity in Government and Politics Act** should be compensated from public funds.

Recommendation 19: The Integrity in Government and Politics Act should be drafted as clearly and as tersely as possible. It must be "reader friendly". Such an important Act should be comprehensible to citizens and to those whose activities are governed by it.

- We advance this recommendation without further specific comments. The **Conflicts of Interest Act** is often complex in its prose to the point of incomprehensibility. The Acts in British Columbia and Ontario rest on

similar principles. Yet they are shorter and more clearly written than the **Conflicts of Interest Act.**

INTEGRITY IN GOVERNMENT: APPOINTED OFFICIALS

The Panel deliberated at length about the place of appointed officials in an "Integrity in Government" policy. Our terms of reference obliged us to do so.

The problem of appointed officials in a conflicts of interest system is a complex one. There are 83 Members of the Legislative Assembly of Alberta. There are **thousands** of civil servants and appointed officials. Appointed officials in Alberta undertake technical, regulatory and policy advisory roles. They vary in their influence and discretion. They are located all over the province. In several important cases, they represent Alberta's interests in other countries and in Ottawa. They work in government agencies of different sizes, with different traditions and with different legal and financial relations with government.

In modern politics, public concern about government ethics has focused on elected officials. Much less attention is paid to the role of civil servants. This imbalance in public debate is unfortunate. Civil servants are less visible than politicians. Their backgrounds and views are not well known even to well informed citizens. Yet civil servants and other appointed officials are significant forces in modern governments. Civil servants advise governments on new policy initiatives and the reform of existing policies. They exercise discretion in shaping regulations and making day to day decisions that put flesh on the bones of legislation. They deal with interest

groups. They negotiate contracts, procure costly goods and services from businesses and supervise "contracting out". Appointed officials evaluate government programs to find out what is working and what is ineffective. They often exercise discretion in the performance of their duties.

For these reasons, an effective integrity in government system must carefully consider the place of appointed officials. To ignore their role in Alberta government would lead to an incomplete analysis.

The Panel believes that the vast majority of appointed officials in Alberta are persons of integrity, competence and dedication. But their place must be clearly acknowledged in a conflicts of interest system that has the confidence of the public.

Appointed Officials: The Present Situation

Appointed officials in Alberta operate under the conflicts of interest system, the key elements of which are:

- Almost all provincial civil servants are covered by the **Code of Conduct and Ethics for the Public Service of Alberta**. This Code covers such topics as outside employment, political activities of civil servants, investment and management activities, acceptance of gifts and dealings with relatives. The Code is administered by the deputy ministers. There are sanctions, including dismissal, for its violation.

In a recent report, the Auditor-General noted that the Code had not been updated for several years in light of changing circumstances. The Code is

presently under review. The Code of Conduct and Ethics for the Public Service of Alberta does not have the force of law.

- Departments may extend and enhance the service-wide Code with rules that reflect their special circumstances and mandates. Departmental codes cannot be more permissive than the system-wide Code.
- In 1993, a memorandum (hereafter referred to as the Fowler memorandum) from the then Minister of Justice and Attorney General of Alberta, Hon. Richard Fowler, outlined an important set of rules for a small group of appointed officials called "senior officials". The Fowler memorandum did not clearly define "senior officials". The term now applies to a small group (currently about 70 people) including deputy ministers, the heads of important provincial agencies and senior staff in the Premier's Office. These persons are subject to a set of rules broadly comparable to those facing Members of the Executive Council under the **Conflicts of Interest Act**. "Senior officials" are prohibited from owning certain publicly-traded securities unless they are in a blind trust approved by the Ethics Commissioner.

The rules for "senior officials" rest on **disclosure** of financial and business activities. "Senior officials" must file disclosure statements with the Ethics Commissioner. Their statements require disclosure of assets, liabilities and income sources in a manner comparable to that for Members of the Legislative Assembly. "Senior officials" are obliged to reveal financial data

about their spouses, minor children and private corporations controlled by any one or more of them.

"Senior officials" are not now subject to post-employment restrictions. Their disclosure statements are not made public after submission to the Ethics Commissioner. Problems with disclosure statements or complaints about conduct of senior officials are dealt with by the Ethics Commissioner who acts by notifying the responsible Minister and the Minister of Justice. Sanctions for non-compliance or breach of the rules are not specified. Nor is there an appeal process. Finally, the Fowler memorandum is a policy statement. It does have the force and significance of law.

Appointed Officials: Recommendations

The Panel concludes that the framework of controls over appointed officials in the Government of Alberta requires significant changes. Without such changes, the "Integrity in Government" policy that we are proposing will be deficient. For this reason, we advance the following recommendations:

Recommendation 20: The Code of Conduct and Ethics for the Public Service must continue to be systematically reviewed and modernized in light of changing circumstances. Provincial public employees must know their obligations under the Code. Training and development activities in this area should be reviewed continuously to determine their effectiveness.

- Under the direction of the Public Service Commissioner of Alberta, the Code of Conduct and Ethics for the Public Service of Alberta must continue to be refined and updated. This work should be a **priority**. The Code is the set of rules and obligations that governs the behaviour of the civil servants with whom Albertans interact on a daily basis. Its importance cannot be underestimated. Through appropriate means, a draft version of a revised Code should be made available for public discussion. The Public Service Commissioner of Alberta should continue his efforts in the area of training and development. In an organization as

large as the Government of Alberta, employees must understand their obligations to their employer, to their fellow employees and to Albertans.

Recommendation 21: A new group of officials is proposed as the basis for a revised policy for appointed officials. The group will be called "policy officials". In addition to the obligations imposed by the Code of Ethics and Conduct for the Public Service, "policy officials" will be subject to obligations and restrictions outlined in the Integrity in Government and Politics Act. "Policy officials" means all present "senior officials", all assistant deputy ministers, executive assistants, senior staff in the Office of the Leader of the Opposition and a further group who, in the view of their Minister and the Premier, wield enough policy or administrative influence to be included.

- The present definition of "senior officials" places too few influential appointed officials under a tough conflicts of interest system. Accordingly, we recommend that the term "senior officials" be abandoned. In its place we recommend the term, "policy officials". The new group of "policy officials" will be larger than the present group of "senior officials". It will embrace the following categories of officials:

1. all those that are presently covered under the term "senior officials"
2. assistant deputy ministers. Chief Judge Wachowich's 1990 report noted that this group of officials should be subject to demanding guidelines. They exercise important policy and decision-making responsibilities.

3. Executive assistants to ministers or to other "policy officials". Such officials are not now covered by any clear rules. Admittedly, they are a heterogeneous group whose Members have different relationships with Ministers and who wield influence in different degrees. But they are officials who are close to the centre of power and who may have access to important information or influence over the expenditure of public funds. In his 1990 report, Chief Judge Wachowich also recommended that executive assistants should work under clear ethical guidelines. At the federal level, they are covered by the Government of Canada's Conflict of Interest and Post-Employment Code for Public Office Holders.
4. Senior officials in the Office of the Leader of the Opposition and in the offices of the leaders of other political parties that are represented in the Legislative Assembly.
5. A designated group of other officials. This final group would comprise those appointed officials, **further to those noted above**, employed by the Government of Alberta who exercise significant influence over the development of policy and/or who exercise significant influence over the interpretation of existing policy and/or who have routine access to significant confidential information and/or who are significantly involved in contracting out, the negotiation of contracts and tenders, the procurement of goods and services and the discretionary allocation of public funds.

This pool of "policy officials" would be a dynamic one. It would not necessarily be large. It would be selected in the following way. For each department or agency for which they are responsible, the Minister, after consultation with the deputy minister and/or senior responsible official, would develop a further list of "policy officials". Such a list would recognize the diversity of the agencies of the Government of Alberta and the unique characteristics of their roles and personnel.

To ensure a system-wide perspective, the list would be examined and finalized by the Premier after consultation with the Deputy Minister to the Executive Council and the Public Service Commissioner of Alberta. The list of "policy officials" would then be discussed and amended, if necessary, by the Premier and the Ethics Commissioner. (Officials in the Office of the Leader of the Official Opposition and, when applicable, other political parties will be determined by the Leader of the Opposition or party leader). The list of "policy officials" will be part of the public record.

Such an approach to the determination of "policy officials" is feasible. It would highlight to the public a set of key decision-makers. It would determine in a unique way a set of appointed officials who must operate under rigorous conflicts of interest rules, not simply because of their titles, but because of their positions and the nature of their work. It would be a major contribution to an "Integrity in Government" policy that would mark Alberta as a leader.

Recommendation 22: "Policy Officials" will be covered by the Integrity in Government and Politics Act. The legislation will establish the disclosure obligations, post-employment restrictions and other obligations under which such officials should operate. To the extent possible, "policy officials" should be subject to the same obligations as Members of the Legislature and the same restrictions as Ministers and those other elected officials noted in Recommendation 4.

- "Policy officials" should be subject to the **Integrity in Government and Politics Act**. Only in this way, will the importance of the issues be highlighted. In this way, Albertans will know what conduct is expected of appointed public officials.

  The statute will rest on the principle that "policy officials" wield power in government and that this power should be subject to clear standards of conduct. Public disclosure of financial assets, liabilities, income and business activities will be at the heart of the section.

  The provisions on "policy officials" would define "policy officials" according to the criteria noted above, outline the obligations, including post-employment rules, under which such officials will operate, note their obligation to disclose information about themselves, their spouses, their minor children and their direct associates and establish sanctions for breach of the Act. The role of the Ethics Commissioner would be outlined in detail as it relates to "policy officials".

"Policy officials" would be subject to the "apparent" conflict of interest test. They would also work under an obligation to act impartially in the conduct of their public duties. They would be obliged to withdraw from government business when they are in conflict or apparent conflict of interest.

The Code of Conduct for and Ethics for the Public Service of Alberta should be a regulation under the **Integrity in Government and Politics Act.**

Recommendation 23: "Policy Officials" should be subject to post-employment restrictions comparable to those imposed on Members of Executive Council and others specified in recommendation 4. This means a one year "cooling off" period.

- "Policy officials" should be subject to post-employment guidelines. Like Ministers, they should be subject to restrictions on lobbying activities and for assuming employment with organizations with which they dealt, as "policy officials", in significant ways. A suitable "cooling off" period is one year.

  This policy must be carefully and thoughtfully administered. For example, elected officials may resign or be defeated in an election. On the other hand, appointed officials, even at the senior levels, can be laid off. The changing nature of public employment demands that each case be carefully assessed.

Recommendation 24: The disclosure statements of "Policy Officials" should be made available to the public through the Ethics Commissioner.

- Under the Fowler memorandum, the disclosure statements of "senior officials" are submitted to the Ethics Commissioner but not to the public. We recommend a significant change. The disclosure documents for "policy officials" and for their spouses, minor children and direct associates should be made available **to the public** through the Office of the Ethics Commissioner (subject to a list of excluded information like that governing the disclosure statements of Members of the Legislative Assembly).

  The Panel thought hard about this recommendation. It is a change in the terms and condition of employment for important appointed officials in Alberta. Their personal financial lives and those of their families will be exposed to public scrutiny. In a perhaps unexpected way, they are defined as "public figures".

  At the end of the day, we concluded that disclosure, if it is to contribute significantly to public confidence in government, **means disclosure to the public at large.**

Recommendation 25: In the event of an alleged breach of the law by a "policy official", the Commissioner will investigate. If necessary he will recommend sanctions to the responsible minister, or party leader, who will decide on action to be taken, if any.

- The Panel recommends that the Ethics Commissioner, who is presently responsible for "senior officials", should retain considerable, but not total, responsibility for "policy officials". We do not make this recommendation lightly. In our system of government, ministerial responsibility for the actions of his/her subordinates is a central constitutional principle. In our work, we frequently heard this argument. Appointed officials are widely thought to be agents of the government. Seen from this angle, it is argued that the Ethics Commissioner, as an officer of the Legislature, should have no role monitoring, let alone judging, the conduct of appointed officials. On the other hand, a strong case can be made that a neutral official, by that we simply mean someone independent of the executive branch of government, must interpret ethical rules for the influential appointed officials, must occasionally investigate their conduct and must recommend sanctions where necessary. Disciplinary action, if required, would be determined by the responsible Minister or party leader. In this way and through the recommended system for selecting some of the "policy officials", management of the conflicts of interest system for appointed officials would be shared between the Government, leaders of

the opposition parties, as it relates to persons employed in their offices, and the Ethics Commissioner.

Summary: Proposals for Appointed Officials

By any standards, these are significant changes. For the first time, important appointed officials in Alberta would be subject to a law that establishes a conflicts of interest system for them.

The system will apply to a larger group of public officials than at present. It covers the present "senior officials", assistant deputy ministers, executive assistants , senior staff in the Office of Leader of the Official Opposition, and a final group of officials who wield sufficient influence to merit inclusion. "Policy officials" would, for the first time, be subject to post-employment guidelines.

Other Provincial Institutions: A Further Important Consideration

Recommendation 26: Conflicts of interest rules are needed for those persons who hold significant positions in public institutions but who are not covered by the Integrity in Government and Politics Act. This policy would address the status of those in institutions that are extensively funded by the Government in Alberta like universities and colleges, school boards and regional health authorities. There are many other examples.

Persons who hold positions of power and public trust in such institutions must work under conflicts of interest rules that are clear, fair to the Albertans involved, and that promote the integrity of public institutions. Conflicts of interest rules are needed whenever persons in public institutions influence policy, have access to important information and influence the allocation of public money. As soon as possible, the Government should outline a detailed policy that covers these organizations and the people that serve in them.

Government in Alberta is always changing. Sometimes change is subtle and piecemeal. At other times, like the present, change is fast and wide-ranging. In response to the pressures of deficit and debt reduction, the Government of Alberta has significantly altered its roles. Such changes have exerted major impacts on the institutions of government.

New organizations like the regional health authorities, the Alberta Economic Development Authority and the Alberta Science and Research Authority have policy-making and administrative power.

These new public agencies have implications for the effectiveness and integrity of government in Alberta. Again, the Panel imputes no ill will to those involved in these changes. To the contrary, many public spirited Albertans give considerable amounts of their time to the organizations noted above and to many others. But the Panel is worried that these changes blur the boundaries between government and private organizations and confer policy power, and access to important information, on persons who are neither elected nor appointed officials by any conventional definition. In some cases, key persons are unremunerated volunteers who have demanding full time jobs. Their ethical conduct is beyond the scope of the present rules and those that we propose. So too is the conduct of persons who hold positions of power and public trust in such important provincially funded bodies as universities and colleges, school boards and hospitals.

The Panel is concerned about this situation. We did not have the time to examine the issues with the care they deserve. As a priority, we recommend that the Government of Alberta examine carefully those agencies which confer policy power or access to information on persons who are not subject to the rules and guidelines under which elected and appointed officials operate.

The Government should determine a policy that is fair to the Albertans involved and that respects the integrity of government.

In undertaking this work, the Panel recommends that the Government accept the following principle -- **persons who wield significant policy authority on behalf of government in any way, through any form of government organization or government funded organization, or employment or advisory relationship with government should operate under conflicts of interest rules.** As soon as possible, the Government should issue a detailed policy statement that covers these organizations and the people who serve in them session.

The Control of Lobbyists in Alberta: Another New Dimension of Government Integrity

Recommendation 27: The Integrity in Government and Politics Act should require the registration of lobbyists and set standards for their conduct. Such legislation will make government more transparent and more accountable.

So far our report has stressed the integrity of public office-holders both elected and appointed. Our final concern is with those persons who lobby government for policy, administrative, legal and regulatory changes in their interest, in the interests of clients who pay for their services or in the interest of an organization that employs them. In a democracy, citizens must know which organizations and individuals influence public policy, the techniques they employ, who in government they meet and when and the extent of their efforts to shape public policy.

As a third dimension of a strong **Integrity in Government and Politics Act**, Alberta should require the registration of lobbyists. Such legislation would boost the quality and openness of public policy-making in Alberta.

The lobbyists' section of the **Integrity in Government and Politics Act** will not impede the normal conduct of democratic politics or that of pressure

groups. Such an Act would not interfere with the activities of citizens seeking to influence government. Nor would it interfere with such activities such as municipal-provincial negotiations.

Our proposed law requires that individuals who lobby for clients, or organizations who employ people whose principal role is to lobby governments for policy changes, must register their activities and make public who they work for, what purposes they are pursuing, who they are attempting to persuade and possibly the financial arrangements under which they operate.

In 1995, Parliament significantly updated the federal **Lobbyist Registration Act** to streamline its administration, to extend its scope, to provide better information to the public about lobbying and to increase public confidence in government.

The federal Act, subject to suitable modifications, could serve as a guide for Alberta.

CONCLUSIONS AND LIST OF RECOMMENDATIONS

The proposed **Integrity in Government and Politics Act** advances significantly revised conflicts of interest rules for elected and appointed officials and a lobbyist registration process. It builds on the past and offers new principles and ideas. The proposed Act combined with the recently passed **Access to Information and Privacy Act**, will provide Albertans with a tough, but realistic, "Integrity in Government" package. Alberta's conflicts of interest rules will be second to none in Canada.

Recommendation 1: The Integrity in Government and Politics Act should begin with a clear statement of purpose that indicates to Members of the Legislative Assembly , appointed officials and the citizens of Alberta, the ethical obligations of public office holders.

Recommendation 2: The Integrity in Government and Politics Act should state that Members of the Legislative Assembly and appointed officials will avoid both real and "apparent" conflicts of interest.

Recommendation 3: The Integrity in Government and Politics Act should establish an obligation on Members of the Legislative Assembly and

appointed officials to act impartially on behalf of all Albertans. The present Act does not have such an obligation.

Recommendation 4: Under the proposed Integrity in Government and Politics Act, the obligations now imposed on Members of Executive Council and the restrictions now imposed on "former Ministers" should be extended to those Members of the Legislative Assembly who chair Standing Policy Committees and/or who chair or supervise in significant ways agencies of the Government of Alberta.

Recommendation 5: Under the Integrity in Government and Politics Act, the Leader of the Official Opposition should operate under the responsibilities and obligations imposed on Members of Executive Council, those other Members of the Legislative Assembly noted in recommendation 4 and former Ministers.

Recommendation 6: The Integrity in Government and Politics Act should employ a clear definition of the financial instruments in which Ministers and designated others should not be involved.

Recommendation 7: The present section on Members' contractual dealings with governments is too complex. It requires clarification and

simplification especially as "contracting out" of government services is now a major part of public management in Alberta.

Recommendation 8: The present obligation on Members, outlined in Section 12 of the Conflicts of Interest Act, to report the financial status of their spouses and minor children "so far as is known to the Member" is too weak. The Panel therefore recommends that Members be obliged to make "reasonable efforts'" to ascertain the facts. Otherwise public disclosure cannot be effective.

Recommendation 9: When Members withdraw from their legislative duties because of conflicts of interest or apparent conflicts of interest, the general circumstances and times of such withdrawals must be part of the public record.

Recommendation 10: The present restrictions on the activities of former Ministers are legitimate safeguards of the public interest. The existing six month "cooling off" period is too short. It should be 12 months.

Recommendation 11: Members must seek advice from the Ethics Commissioner when they are uncertain about what constitutes a gift, fee or other benefit or about the circumstances in which a gift, fee or benefit may be

accepted. The onus is on them. Other Canadian governments deal with gifts in a manner similar to Alberta. No obviously superior policy alternative presents itself, although other jurisdictions, notably British Columbia and Ontario, employ much clearer statutory language when dealing with gifts.

Recommendation 12: Income, gifts or other benefits received from a political party are covered by the Act and must be reported and disclosed. Leaders of political parties must be especially mindful of their obligations in this regard.

Recommendation 13: The Integrity in Government and Politics Act should be reviewed by a committee of the Legislature every five years.

Recommendation 14: Consideration should be given to separating the Offices of the Ethics Commissioner and the Office of the Access to Information and Privacy Commissioner.

Recommendation 15: The educational activities of the Ethics Commissioner should be enhanced. The Commissioner should meet with each caucus at least twice annually. Candidates for elected office should be informed of their ethical obligations when they are nominated or even earlier if possible.

Recommendation 16: Members' unpaid taxes should be publicly disclosed.

Recommendation 17: The disclosure forms used by the Office of the Ethics Commissioner must be continuously reviewed and updated. The forms should clearly state the Members' obligations and the purposes served by the information being requested.

Recommendation 18: The legitimate costs of Members for complying with the Act should be paid for by public funds.

Recommendation 19: The Integrity in Government and Politics Act must be drafted as clearly and as tersely as possible. It must be "reader friendly". Such an important Act should be readily comprehensible to citizens and to those whose activities are governed by it.

Recommendation 20: The Code of Conduct and Ethics for the Public Service must continue to be systematically reviewed and modernized in light of changing circumstances. Provincial public employees must know their obligations under the Code. Training and development activities in this area should be reviewed continuously to determine their effectiveness.

Recommendation 21: A new group of officials is proposed as the basis for a revised policy for appointed officials. The group will be called "policy officials". In addition to the obligations imposed by the Code of Ethics and

Conduct for the Public Service, "policy officials" will be subject to obligations and restrictions outlined in the Integrity in Government and Politics Act. "Policy officials" means all present "senior officials", all assistant deputy ministers, executive assistants, senior staff in the Office of the Leader of the Opposition and a further group who, in the view of their Minister and the Premier, wield enough policy or administrative influence to be included.

Recommendation 22: "Policy Officials" will be covered by a section of the Integrity in Government and Politics Act. The section will establish the disclosure obligations, post-employment restrictions and other obligations under which such officials should operate. To the extent possible, "policy officials" should be subject to the same obligations as Members of the Legislature and the same restrictions as Ministers and those other elected officials noted in Recommendations 4 and 5.

Recommendation 23: "Policy Officials" should be subject to post-employment restrictions comparable to those imposed on Members of Executive Council and others specified in recommendations 4 and 5.. This means a one year "cooling off" period.

Recommendation 24: The disclosure statements of "Policy Officials" should be disclosed to the public through the Ethics Commissioner.

Recommendation 25: In the event of an alleged breach of the law by a "policy official", the Commissioner will investigate. If necessary he will recommend sanctions to the responsible minister, or party leader, who will decide on action to be taken, if any.

Recommendation 26: Conflicts of interest rules are needed for those persons who hold significant positions in public institutions but who are not covered by the Integrity in Government and Politics Act. This policy would address the status of those in institutions that are extensively funded by the Government in Alberta like universities and colleges, school boards and regional health authorities. There are many other examples.

Persons who hold positions of power and public trust in such institutions must work under conflicts of interest rules that are clear, fair to the Albertans involved, and that promote the integrity of public institutions. Conflicts of interest rules are needed whenever persons in public institutions influence policy, have access to important information and influence the allocation of public money. As soon as possible, the Government should outline a detailed policy that covers these organizations and the people that serve in them.

Recommendation 27: The Integrity in Government and Politics Act should require the registration of lobbyists and set standards for their conduct. Such legislation will make government more transparent and more accountable.

CONFLICTS OF INTEREST ACT

CHAPTER C-22.1

Table of Contents

Part 1
Interpretation

Interpretation 1

Part 2
Obligations of Members

Decisions furthering private interests 2
Influence 3
Insider information 4
Constituency matters 5
Offices and employment 6
Gifts, benefits from persons other than Crown 7
Contracts with the Crown 8
Payments from the Crown 9
Deemed Member 10

Part 3
Disclosure

Disclosure statements 11
Contents of disclosure statement 12
Meeting with Members 13
Public disclosure statements 14
Returns relating to persons directly associated 15
Provincial Treasurer's report 16
Filing of public disclosure statements 17
Failure to file 18

Part 4
Members of the Executive Council

Restriction on holdings 19
Employment restrictions 20
Time for compliance 21

Part 5
Investigation into Breaches

Requests for investigation 22
Investigation and inquiry 23
Confidentiality 24
Ethics Commissioner's report 25
Tabling of report 26
Powers of the Legislative Assembly 27
Offences 28

Part 6
Former Ministers

Dealings with Government by former Ministers 29
Breach for awarding contracts 30

Part 7
Ethics Commissioner

Appointment 31
Term of office 32
Resignation 33
Suspension or removal 34
Vacancy 35
Remuneration 36
Oath 37
Office of the Ethics Commissioner 38
Financing of operations 39
General duties of Ethics Commissioner 40
Binding advice and recommendations 41
General advice and recommendations 42
Actions against Ethics Commissioner and others 43
Annual report 44

Part 8
Transitional, Consequential and Commencement

Appointment of first Ethics Commissioner 45
Breaches prior to coming into force of Act 46
Blind trusts 47
Consequential amendments 48-53
Coming into force 54

Schedule

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

PART 1

INTERPRETATION

Interpretation

1(1) In this Act,

(a) "Crown" means the Crown in right of Alberta and includes a Provincial agency;

(b) "former Minister" means a person who has ceased to be a member of the Executive Council;

(c) "Member" means a Member of the Legislative Assembly and includes a Minister whether or not the Minister is a Member of the Legislative Assembly;

(d) "Minister" means a member of the Executive Council;

(e) "minor child" includes a minor to whom a Member has demonstrated a settled intention to treat as a child of his family;

(f) "private corporation" means a corporation none of whose shares are publicly-traded securities;

(g) "private interest" does not include the following:

(i) an interest in a matter

(A) that is of general application,

(B) that affects a person as one of a broad class of the public, or

(C) that concerns the remuneration and benefits of a Member;

(ii) an interest that is trivial;

(iii) an interest of a Member relating to publicly-traded securities in the Member's blind trust;

(h) "Provincial agency" means a Provincial agency as defined in the *Financial Administration Act* but does not include a corporation enumerated in section 2(5) of that Act;

(i) "publicly-traded securities" means

(i) securities of a corporation that are listed or posted for trading on a recognized stock exchange, or

(ii) securities of a corporation that has more than 15 shareholders and any of whose issued securities were part of a distribution to the public;

(j) "securities" means

(i) shares of any class or series of shares of a corporation, or

(ii) bonds, debentures, notes or other evidence of indebtedness or guarantees of a corporation, whether secured or unsecured,

but does not include shares or units in a mutual fund;

(k) "senior officer" means, with reference to a corporation,

(i) the president, vice-president, secretary, comptroller, treasurer or general manager of the corporation, or

(ii) any other person who performs functions for the corporation similar to those normally performed by persons holding the offices referred to in subclause (i);

(l) "spouse" includes a party to a relationship between a man and a woman who are living together on a bona fide domestic basis but does not include a spouse who is living apart from the Member if the Member and spouse have separated pursuant to a written separation agreement or if their support obligations and family property have been dealt with by a court order;

(m) "Standing Committee" means the Standing Committee on Legislative Offices.

(2) For the purposes of this Act, securities of a corporation

(a) issued on a conversion of other securities, or

(b) issued in exchange for other securities

are deemed to be securities that are part of a distribution to the public if those other securities were part of a distribution to the public.

(3) Subject to subsection (4), for the purposes of this Act, securities of a corporation

(a) are part of a distribution to the public if, in respect of the securities, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada or a province or of a jurisdiction outside Canada, or

(b) are deemed to be part of a distribution to the public if the securities have been issued and a filing referred to in clause (a) would be required if the securities were being issued currently.

(4) On the application of a Member who owns or is a beneficial owner of securities of a corporation, the Ethics Commissioner may determine, for the purposes of this Act, whether or not the

securities of the corporation are or were part of a distribution to the public.

(5) For the purposes of this Act, a person is directly associated with a Member if that person is

(a) the Member's spouse,

(b) a corporation having share capital and carrying on business or activities for profit or gain and the Member is a director or senior officer of the corporation,

(c) a private corporation carrying on business or activities for profit or gain and the Member owns or is the beneficial owner of shares of the corporation,

(d) a partnership having not more than 20 partners

(i) of which the Member is a partner, or

(ii) of which one of the partners is a corporation directly associated with the Member by reason of clause (b) or (c),

or

(e) a person or group of persons acting as the agent of the Member and having actual authority in that capacity from the Member.

(6) Subsection (5)(c) does not apply where the corporation is

(a) an association as defined in the *Co-operative Associations Act*,

(b) a credit union continued or incorporated under the *Credit Union Act*,

(c) a co-operative credit society incorporated by or under an Act of the Parliament of Canada, or

(d) The United Farmers of Alberta Co-Operative Limited.

(e) repealed 1992 c21 s9.

(7) For the purposes of this Act, a trust is a "blind trust" if it meets the following criteria:

(a) a Member is the settlor of the trust;

(b) the trustee is approved as trustee by the Ethics Commissioner after the Ethics Commissioner is satisfied that there is no relationship between the Member and the trustee that would affect or would appear to affect the discharge of the trustee's duties;

(c) the terms of the trust, in the opinion of the Ethics Commissioner,

(i) give the trustee sole power over investment decisions,

(ii) preclude the Member from having any knowledge of the specific investments in the trust at any time after a deposit in the trust,

(iii) require that the Member may deposit in the trust only securities verified by the Ethics Commissioner as being publicly-traded securities, and

(iv) require the trustee to invest only in publicly-traded securities or in certificates of deposit, deposit receipts or other evidence of indebtedness given by a bank, trust company, credit union or treasury branch in consideration of a deposit made with the bank, trust company, credit union or treasury branch.

1991 cC-22.1 s1;1992 c21 s9

PART 2

OBLIGATIONS OF MEMBERS

Decisions furthering private interests

2(1) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

(2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor child or a person directly associated with the Member has

a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

(3) A Member who fails to comply with subsection (2) breaches this Act.

(4) If a matter referred to in subsection (1) requires a decision of a Minister, the Minister may request another Minister to act in the Minister's stead in connection with the decision and the Minister to whom it is referred may act in the matter for the period of time necessary.

Influence

3 A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

Insider information

4 A Member breaches this Act if the Member uses or communicates information not available to the general public that was gained by the Member in the course of carrying out the Member's office or powers to further or seek to further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

Constituency matters

5 A Member does not breach this Act if the activity is one in which a Member of the Legislative Assembly normally engages on behalf of constituents.

Offices and employment

6(1) A Member breaches this Act if the Member

(a) is at the time of being sworn in as a Member, or becomes at any time after being sworn in as a Member,

(i) an employee of the Crown in right of Canada, whether the employment is permanent or temporary or on a full-time or part-time basis, or

(ii) the holder of an office by reason of an appointment by or at the nomination of the Governor in Council or a Minister of the Crown in right of Canada, and to which a salary is attached,

or

(b) becomes at any time while a Member

(i) an employee of the Crown, whether the employment is permanent or temporary or on a full-time or part-time basis, or

(ii) the holder of any of the offices set out in the Schedule.

(2) If a person is, immediately before becoming a Member,

(a) an employee of the Crown, whether the employment is permanent or temporary or on a full-time or part-time basis, or

(b) the holder of any of the offices set out in the Schedule,

that person, on becoming a Member, ceases to be an employee of the Crown or the holder of the office, as the case may be, notwithstanding any other Act or law in force in Alberta.

(3) A Member does not breach this section by reason of being appointed to an office set out in the Schedule in the Member's capacity as a Minister if the Member receives no remuneration as the holder of that office other than reasonable travelling and living expenses incurred in the course of serving in that office.

(4) Employment with the Crown held pursuant to a contract of employment shall be governed by this section and not by section 8.

Gifts, benefits from persons other than Crown

7(1) A Member breaches this Act if the Member or, to the knowledge of the Member, the Member's spouse or minor child accepts from a person other than the Crown a fee, gift or other benefit that is connected directly or indirectly with the performance of the Member's office.

(2) Subsection (1) does not apply to a fee, gift or other benefit that is accepted by the Member or the Member's spouse or minor child as an incident of protocol or of the social obligations that normally accompany the responsibilities of the Member's office if

(a) the total value of the fees, gifts and benefits given from the same source to the Member and the Member's spouse and minor children in any calendar year is $200 or less, or

(b) the Member applies to the Ethics Commissioner

(i) as soon as practicable after the fee, gift or benefit is received by the Member, or

(ii) as soon as practicable after the Member has knowledge that the fee, gift or benefit has been accepted by the Member's spouse or minor child,

and either obtains the Ethics Commissioner's approval for its retention, on any conditions the Ethics Commissioner prescribes, or, if the approval is refused, takes such steps as the Ethics Commissioner directs with respect to the disposition of the fee, gift or benefit.

(3) The Ethics Commissioner may give an approval under subsection (2)(b) only where the Ethics Commissioner is satisfied that there is no reasonable possibility that retention of the fee, gift or other benefit will create a conflict between a private interest and the public duty of the Member.

Contracts with the Crown

8(1) A Member breaches this Act if, while being a Member, the Member or a person directly associated with the Member becomes a party to a contract within any of the following classes:

(a) a contract under which the Member or the person directly associated with the Member borrows money from a treasury branch;

(b) a contract under which the Member or the person directly associated with the Member conveys or agrees to convey to the Crown any interest in land otherwise than

(i) by consenting to the acquisition by the Crown of the interest under section 30 of the *Expropriation Act* and executing a conveyance under that section, or

(ii) with the approval of the Ethics Commissioner on certification that the consideration for the conveyance is fair and reasonable;

(c) a contract to which the Crown is also a party and that is for the construction, demolition, alteration or repair of a public work;

(d) a contract under which the Agriculture Financial Services Corporation lends money to, or guarantees a debt of, the Member or the person directly associated with the Member;

(e) a contract under which the Alberta Opportunity Company lends money to, or guarantees a debt of, the Member or the person directly associated with the Member;

(f) a contract to which the Crown is also a party, other than a contract referred to in clauses (a) to (e), if the Member or the person directly associated with the Member receives a preference from the Crown on entering into the contract or receives a benefit under the contract not available to other members of the public under contracts of the same class.

(2) Subsection (1)(f) does not prevent a Member or a person directly associated with the Member from becoming a party to a contract with the Crown if the contract provides for a payment or benefit permitted under section 9(2)(a), (b) or (c).

(3) A Member does not breach subsection (1) in respect of a renewal or renegotiation of a contract to which that subsection would otherwise apply if

(a) at the time of becoming a Member, the Member or the person directly associated with the Member was a party to the contract,

(b) the contract is to be renewed according to the provisions of the contract or is to be renegotiated,

(c) the contract is not within any of the classes mentioned in subsection (1)(a) to (e), and

(d) the Ethics Commissioner, before the renewal is made or the replacement contract is executed by the Member or the person directly associated with the Member, gives an opinion that

(i) the provisions of the renewal or the replacement contract are fair and reasonable in the circumstances, having regard to the provisions of the existing contract or previous contract,

(ii) in the case of a renewal, the renewal will be effected in accordance with the provisions of the contract pertaining to its renewal, and

(iii) the Member or the person directly associated with the Member has not received any preference from the Crown in relation to the renewal or in negotiating the replacement contract and will not

receive a benefit under the renewal or replacement contract not available to other members of the public under a contract of the same class.

1991 cC-22.1 s8;1994 c23 s10

Payments from the Crown

9(1) A Member breaches this Act if, while being a Member, the Member or a person directly associated with the Member accepts a payment of public money from the Crown or a person acting on behalf of the Crown otherwise than as permitted by subsection (2).

(2) A Member or a person directly associated with the Member may accept a payment of public money from the Crown or a person acting on behalf of the Crown if

(a) the payment is made to the Member pursuant to Part 3 or 4 of the *Legislative Assembly Act* or otherwise in the Member's capacity as a Member of the Legislative Assembly, as a member of the Executive Council or as the holder of an office to which the Member is elected by the Legislative Assembly or appointed by or at the nomination of the Lieutenant Governor in Council or a Minister of the Crown in right of Alberta, and the payment is authorized by or pursuant to

(i) the *Legislative Assembly Act* or any other enactment,

(ii) a resolution or order of the Legislative Assembly, or

(iii) a supply vote or Heritage Fund vote as defined in the *Financial Administration Act*,

(b) the recipient is, according to the enactment authorizing the payment, entitled to the payment as a matter of right or subject only to compliance with the requirements of that enactment that are conditions precedent to the payment,

(c) the recipient of the payment

(i) is, according to the enactment under which the payment is authorized, eligible to apply for the payment and complies with the requirements of that enactment that are conditions precedent to the payment,

(ii) in respect of the recipient's application is given no preference not available to others, and

(iii) receives no special benefit in relation to the recipient's application or the payment,

or

(d) the payment is made under a contract that may be entered into without the Member being in breach of section 8.

Deemed Member

10 If a person ceases to be a Member of the Legislative Assembly by reason of dissolution of the Legislature or otherwise and again becomes a Member of the Legislative Assembly by reason of being elected in the succeeding general election or by-election, as the case may be, then, for the purposes of sections 8 and 9, the person is deemed to be a Member of the Legislative Assembly during the intervening period.

PART 3

DISCLOSURE

Disclosure statement

11(1) Every Member shall file with the Ethics Commissioner a disclosure statement in the form provided by the Ethics Commissioner

(a) within 60 days after becoming a Member of the Legislative Assembly,

(b) within 60 days after being appointed to the Executive Council if the Member has not filed a current disclosure statement as a Member of the Legislative Assembly, and

(c) in each subsequent year at the time specified by the Ethics Commissioner.

(2) Every person who is a Member on the coming into force of this section shall file a disclosure statement within 60 days of the coming into force of this section.

(3) A Member shall, within 30 days after the occurrence of any material changes to the information contained in a current disclosure statement, file with the Ethics Commissioner an amending disclosure statement in the form provided by the Ethics Commissioner setting out the changes.

Contents of disclosure statement

12 A disclosure statement

(a) shall include a statement, as of a date determined by the Ethics Commissioner, of the assets, liabilities and financial interests of the Member and, so far as known to the Member, of

(i) the Member's spouse and minor children, and

(ii) any private corporation controlled by the Member and the Member's spouse and minor children, or any one or more of them,

but not including investments in a blind trust,

(b) need not include obligations being incurred for ordinary living expenses that will be discharged in the ordinary course of the Member's affairs,

(c) shall include a statement of the income that the Member and, so far as known to the Member, any other person mentioned in clause (a), has received in the preceding 12 months or expects to receive in the next 12 months and, to the extent required by the Ethics Commissioner, the sources of the income, and

(d) shall include a list of all fees, gifts and benefits approved for retention under section 7(2)(b).

Meeting with Members

13 The Ethics Commissioner shall, as soon as practicable after a Member has filed a disclosure statement, meet with the Member and the Member's spouse, if available, to ensure that the Member has made adequate disclosure and to advise about the Member's obligations under this Act.

Public disclosure statement

14(1) After meeting with the Member, and with the Member's spouse if the spouse is available, the Ethics Commissioner shall prepare a public disclosure statement.

(2) Where a Member files an amending disclosure statement, the Ethics Commissioner, after consulting the Member and the Member's spouse, if available, shall, if the Ethics Commissioner considers it necessary, prepare either a new public disclosure statement or a supplementary public disclosure statement, which shall form part of the Member's public disclosure statement.

(3) Except as provided in this section, a public disclosure statement shall identify

(a) the assets, liabilities, financial interests and sources of income, and

(b) the fees, gifts or benefits approved for retention under section 7(2)(b),

as disclosed in the Member's disclosure statement, but shall not state the amount or value of them.

(4) The following shall be excluded from a public disclosure statement unless the Ethics Commissioner is of the opinion that disclosure of the asset, liability, financial interest, source of income or information is likely to be material to the determination of whether or not a Member is or is likely to be in breach of this Act:

(a) assets, liabilities or interests having a value of less than $1000;

(b) a source of income of less than $1000 per year;

(c) information identifying a home or recreational property occupied by the Member or one of the Member's family;

(d) things used personally by a Member or one of the Member's family;

(e) unpaid taxes;

(f) support obligations.

(5) The Ethics Commissioner may from time to time establish other categories of matters to be excluded from public disclosure statements on the grounds that they are of little or no importance and are not likely to be material to the determination of whether or not a Member is or is likely to be in breach of this Act.

(6) If in the opinion of the Ethics Commissioner disclosure of the amount or value of an asset, liability, financial interest or source of income is likely to be material to the determination of whether or not a Member is or is likely to be in breach of this Act, the amount or value shall be included in the public disclosure statement.

(7) The Ethics Commissioner may exclude from the public disclosure statement a source of income received by a Member's spouse or minor child or a private corporation if

(a) the income is or will be received in respect of services or things that are customarily provided on a confidential basis, or

(b) the possibility of serious harm to a business of the spouse, minor child or private corporation justifies a departure from the general principle of public disclosure.

(8) Information included in a disclosure statement or amending disclosure statement of a Member to the Ethics Commissioner and not included in the Member's public disclosure statement is confidential unless it is relevant to a proceeding under Part 5.

(9) On completion of a public disclosure statement or a supplementary disclosure statement, the Ethics Commissioner shall file it with the Clerk of the Legislative Assembly.

Returns relating to persons directly associated

15(1) Every person who is a Member at the date of the coming into force of this section shall, not later than 60 days after this section comes into force, furnish to the Ethics Commissioner a return showing

(a) the name and address of each person with whom the Member was directly associated on the date this Act came into force and of the persons with whom the Member became associated after that date and before the date of the return, and

(b) if the Member's direct association with any person referred to in clause (a) terminated before the date of the return, the date of the termination.

(2) Every person who becomes a Member after the coming into force of this section shall, within 60 days after becoming a Member, furnish to the Ethics Commissioner a return showing

(a) the name and address of each person with whom the Member was directly associated on the day of becoming a Member and with whom the Member became directly associated after that date and before the date of the return, and

(b) if the Member's direct association with any person referred to in clause (a) terminated before the date of the return, the date of the termination.

(3) Every Member shall furnish to the Ethics Commissioner

(a) a return showing

(i) the name and address of each person with whom the Member became directly associated on or after the date of the Member's initial return under subsection (1) or (2), and

(ii) the date on which the direct association began,

within 30 days after the direct association began, and

(b) a return showing the date on which the Member's direct association with any person terminated, within 30 days after that date.

(4) Where a person ceases to be a Member by reason of dissolution of the Legislature or otherwise,

(a) that person shall, within 30 days after ceasing to be a Member, furnish a return to the Ethics Commissioner showing

(i) the name and address of each person with whom the person became directly associated or with whom that person ceased to be directly associated on or after the date of that person's last return under this section, and

(ii) the date on which the direct association began or terminated, as the case may be,

and

(b) if that person again becomes a Member in the succeeding general election or by-election, as the case may be, that person shall, within 60 days after again becoming a Member, furnish a return to the Ethics Commissioner showing

(i) the name and address of each person with whom the Member became directly associated or with whom the Member ceased to be directly associated in the intervening period, and

(ii) the date on which the direct association began or terminated, as the case may be.

(5) In a return under this section, a Member is not required to show the name and address of any person who is or was directly associated with the Member by reason of section 1(5)(c) unless that person, during the period of the direct association and as the agent of the Member with actual authority from the Member,

(a) became a party to a contract to which the Crown was also a party, or

(b) received a payment of public money from the Crown or from a person acting on behalf of the Crown, otherwise than pursuant to a contract.

(6) A return under this section may be in the form prescribed by the Ethics Commissioner.

(7) On receipt of a return under this section, the Ethics Commissioner shall file a copy of the return with the Clerk of the Legislative Assembly and provide a copy to the Provincial Treasurer.

Provincial Treasurer's report

16(1) The Provincial Treasurer shall, after the end of each Government fiscal year, prepare a report showing in respect of each person who was a Member during that fiscal year

(a) the names of the persons directly associated with the Member in that fiscal year and the period of the direct association, as indicated by the returns furnished under section 15,

(b) information relating to payments made by the Crown to the Member in that fiscal year, and

(c) information relating to payments made by the Crown in that fiscal year to the respective persons directly associated with the Member in that fiscal year, as indicated by the returns furnished under section 15.

(2) Each Provincial agency shall, in accordance with the directions of the Provincial Treasurer, furnish to the Provincial Treasurer after the end of each Government fiscal year such information as the Provincial Treasurer requires for the purposes of a report under subsection (1) for that fiscal year insofar as it relates to payments made by that Provincial agency in that fiscal year to Members and to the persons directly associated with Members according to the returns furnished under section 15.

(3) The Provincial Treasurer, in providing the information referred to in subsection (1)(b) and (c) in a report under that subsection,

(a) may classify payments in any manner the Provincial Treasurer considers appropriate,

(b) shall show in respect of each class of payments the aggregate amount of the payments of that class made to each Member and to each person directly associated with the Member in the fiscal year, and

(c) shall show in respect of each person who was a Member in the fiscal year to which the report relates the aggregate amount of all payments of all classes made to that Member and the aggregate amount of all payments of all classes made to each person directly associated with the Member in the fiscal year.

(4) A report prepared under subsection (1) shall not include

(a) payments made to or on behalf of the Member pursuant to Part 3 or 4 of the *Legislative Assembly Act*,

(b) payments required to be included in a report under section 43 of the *Legislative Assembly Act*,

(c) payments of benefits under the *Alberta Health Care Insurance Act*,

(d) payments of social allowances or handicap benefits under the *Social Development Act*,

(e) payments of handicap benefits under the *Assured Income for the Severely Handicapped Act*,

(f) payments under the *Seniors Benefit Act*,

(g) pensions under the *Widows' Pension Act*,

(h) compensation paid under the *Workers' Compensation Act* or *Blind Workers' Compensation Act*,

(i) payments made by way of student financial assistance under the *Students Finance Act*,

(j) senior citizen renter assistance grants under the *Property Tax Reduction Act*,

(k) payments made by way of refunds, or

(l) any other class of payments by the Crown if the disclosure in the report of the identity of the recipients would contravene any law in force in Alberta that contains confidentiality requirements in respect of that class of payments.

(5) When a report is prepared under subsection (1), the Provincial Treasurer shall lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

1991 cC-22.1 s16;1994 cS-13.3 s9

Filing of public disclosure statement

17 The Clerk of the Legislative Assembly

(a) shall retain each Member's public disclosure statements, supplementary public disclosure statements and returns,

(b) shall make the public disclosure statements, any supplementary public disclosure statements and returns available for examination by any person who wishes to examine them, and

(c) may, to the extent that the Clerk considers reasonable in view of the facilities available to the Clerk and on payment of reasonable reproduction costs, provide on request to any person copies of any public disclosure statements, supplementary public disclosure statements or returns.

Failure to file

18 A Member breaches this Act if the Member does not file a disclosure statement, an amending disclosure statement or a return within the time provided by section 11 or section 15, as the case may be, or if the Member knowingly gives false or misleading information in a statement or return.

PART 4

MEMBERS OF THE EXECUTIVE COUNCIL

Restriction on holdings

19(1) A Minister breaches this Act if the Minister, after the expiration of the relevant period referred to in section 21, owns or has a beneficial interest in publicly-traded securities.

(2) Subsection (1) does not apply to publicly-traded securities held in the Minister's blind trust in accordance with this Act.

(3) A Minister does not breach subsection (1) if

(a) the Minister acquires ownership of or a beneficial interest in publicly-traded securities with the prior approval of the Ethics Commissioner, or

(b) the Minister

(i) applies, prior to the expiration of the relevant period referred to in section 21, to the Ethics Commissioner for approval to retain ownership of or a beneficial interest in publicly-traded securities, and

(ii) either obtains the Ethics Commissioner's approval or, if the approval is refused, takes such steps as the Ethics Commissioner directs with respect to the disposition of the ownership or beneficial interest.

(4) The Ethics Commissioner may

(a) give an approval in respect of any publicly-traded securities under subsection (3)(a) or (b) if the Ethics Commissioner is of the opinion that they are securities of a corporation the interests of which are not likely to be affected by decisions of the Government, or

(b) give an approval in respect of any publicly-traded securities under subsection (3)(b) if the Ethics Commissioner is of the opinion that disposition of the securities will cause financial loss to the Minister and the public interest does not require disposition by the Minister.

(5) An approval or direction given by the Ethics Commissioner under subsection (3) may be subject to any conditions prescribed by the Ethics Commissioner.

Employment restrictions

20(1) A Minister breaches this Act if the Minister, after the expiration of the period referred to in section 21,

(a) engages in employment or in the practice of a profession,

(b) carries on a business, or

(c) holds an office or directorship other than in a social club, religious organization or political party,

that creates or appears to create a conflict between a private interest of the Minister and the Minister's public duty.

(2) A Minister may carry on an activity referred to in subsection (1) in a way approved by the Ethics Commissioner if

(a) the Minister has disclosed the material facts to the Ethics Commissioner, and

(b) the Ethics Commissioner is satisfied that the activity, if carried on in a way approved by the Ethics Commissioner, will not create or appear to create a conflict between a private interest of the Minister and the Minister's public duty.

(3) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Time for compliance

21(1) For the purposes of sections 19(1) and 20(1),

(a) with respect to a person who becomes a Minister after this Part comes into force, the period is 60 days after being appointed to the Executive Council, and

(b) with respect to a person who is a Minister on the coming into force of this Part, the period is 60 days after the coming into force of this Part,

or such longer period as may be prescribed by the Ethics Commissioner.

(2) For the purposes of section 19(1), with respect to a Minister who acquires ownership of or a beneficial interest in publicly-traded securities by gift or inheritance, the period is 60 days after receiving the gift or inheritance or such longer period as may be prescribed by the Ethics Commissioner.

PART 5

INVESTIGATIONS INTO BREACHES

Requests for investigation

22(1) Any person may request in writing that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by a Member.

(2) A request under subsection (1) must be signed by the person making it and must identify the person to the satisfaction of the Ethics Commissioner.

(3) A Member may request, in writing, that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by the Member.

(4) The Legislative Assembly may, by resolution, request that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by a Member.

(5) The Executive Council may request that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by a Minister.

(6) Where a matter has been referred to the Ethics Commissioner under subsection (1), (3) or (4), neither the Legislative Assembly nor a committee of the Assembly shall inquire into the matter.

Investigation and inquiry

23(1) On receiving a request under section 22 or where the Ethics Commissioner has reason to believe that a Member has acted or is acting in contravention of advice, recommendations or directions or any conditions of any approval or exemption given by the Ethics Commissioner to the Member under this Act, and on giving the Member concerned reasonable notice, the Ethics Commissioner may conduct an investigation with or without conducting an inquiry.

(2) When conducting an inquiry under this section, the Ethics Commissioner has the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*.

(3) If an inquiry is held, it shall be held in public unless the Ethics Commissioner, in the interests of justice, decides that it is to be held in private.

(4) The Ethics Commissioner may refuse to investigate or may cease to investigate an alleged breach under this Act if the Ethics Commissioner is of the opinion that

(a) the request is frivolous or vexatious or was not made in good faith, or

(b) there are no or insufficient grounds to warrant an investigation or the continuation of an investigation.

(5) If the Ethics Commissioner refuses to investigate or ceases to investigate an alleged breach, the Ethics Commissioner shall so inform

(a) the Member against whom the allegation was made, and

(b) the Speaker of the Legislative Assembly, the President of the Executive Council or the person who made the request under section 22, as the case may be.

(6) Where the request is made under section 22(1), (3) o. (4), the Ethics Commissioner shall report his findings to the Speaker of the Legislative Assembly.

(7) The Ethics Commissioner may, before reporting his findings to the Speaker of the Legislative Assembly under subsection (6), provide a copy of the report

(a) to the Member against whom the allegation was made, and

(b) to the leader in the Legislative Assembly of the political party to which the Member belongs.

(8) Where the request is made under section 22(5), the Ethics Commissioner shall report his findings to the President of the Executive Council.

(9) If the Ethics Commissioner is of the opinion

(a) that a request made by a Member under section 22(1) was frivolous or vexatious or was not made in good faith, or

(b) that a request was made under section 22(1) by a person at the request of a Member and that the request was frivolous or vexatious or was not made in good faith,

the Ethics Commissioner may state that in a report to the Speaker of the Legislative Assembly.

(10) The Speaker of the Legislative Assembly shall lay the report referred to in subsection (9) before the Legislative Assembly and the Legislative Assembly, after considering the report, may

(a) find the Member referred to in subsection (9) in contempt of the Legislative Assembly pursuant to section 10 of the *Legislative Assembly Act*, or

(b) order the Member referred to in subsection (9) to pay to the Member against whom the allegation was made the costs of the proceeding incurred by the Member against whom the allegation was made,

or both.

Confidentiality

24(1) Except as provided in this section, the Ethics Commissioner or any former Ethics Commissioner or a person who is or was employed or engaged by the Office of the Ethics Commissioner shall maintain the confidentiality of all information and allegations that come to their knowledge in the course of the administration of this Act.

(2) Allegations and information to which subsection (1) applies may be

(a) disclosed to the Member whose conduct is the subject of proceedings under this Part;

(b) disclosed by a person conducting an investigation to the extent necessary to enable that person to obtain information from another person;

(c) adduced in evidence at an inquiry under this Part;

(d) disclosed in a report made by the Ethics Commissioner under this Part.

Ethics Commissioner's report

25(1) A report by the Ethics Commissioner to the Speaker of the Legislative Assembly under section 23(6) shall set out

(a) the facts found by the Ethics Commissioner, and

(b) the Ethics Commissioner's findings as to whether or not the Member has breached this Act and, if so,

(i) the nature of the breach, and

(ii) the Ethics Commissioner's recommendation for the sanction, if any, that the Legislative Assembly may impose on the Member for the breach.

(2) The Ethics Commissioner may recommend any one of the following sanctions:

(a) that the Member be reprimanded;

(b) that a penalty be imposed on the Member in an amount recommended by the Ethics Commissioner;

(c) that the Member's right to sit and vote in the Legislative Assembly be suspended for a stated period or until the fulfilment of a condition;

(d) that the Member be expelled from membership of the Legislative Assembly;

and may also recommend the alternative of a lesser sanction or no sanction if the Member carries out recommendations in the report for the rectification of the breach.

(3) If the Ethics Commissioner is of the opinion that the breach was trivial, inadvertent or committed in good faith, the Ethics Commissioner may recommend that no sanction be imposed.

(4) Where it appears to the Ethics Commissioner that a report may adversely affect a Member, the Ethics Commissioner shall inform the Member of the particulars and give the Member the opportunity to make representations, either orally or in writing at the discretion of the Ethics Commissioner, before the Ethics Commissioner completes the report.

1991 cC-22.1 s25;1992 c21 s9

Tabling of report

26(1) On receiving a report from the Ethics Commissioner under section 23(6), the Speaker of the Legislative Assembly shall lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(2) If the Legislative Assembly is not sitting when the Ethics Commissioner reports his findings to the Speaker of the Legislative Assembly under section 23(6), the Speaker shall make copies of the report available to the public.

(3) The Legislative Assembly shall deal with a report of the Ethics Commissioner within 60 days after the tabling of the report, or such other period determined by a resolution of the Legislative Assembly.

Powers of the Legislative Assembly

27 The Legislative Assembly may accept or reject the findings of the Ethics Commissioner or substitute its own findings and may if it determines that there is a breach

(a) impose the sanction recommended by the Ethics Commissioner or any other sanction referred to in section 25(2) it considers appropriate, or

(b) impose no sanction.

Offence

28 A breach of this Act by a Member is not an offence to which the *Provincial Offences Procedure Act* applies.

PART 6

FORMER MINISTERS

Dealings with Government by former Ministers

29(1) Except in accordance with subsection (3), a former Minister shall not, for a period of 6 months after ceasing to be a member of the Executive Council,

(a) on behalf of himself or any other person, solicit or accept a contract or benefit from a department of the public service or a Provincial agency with which the former Minister had significant official dealings during the former Minister's last year of service as a Minister,

(b) accept employment with a person or entity, or appointment to the board of directors or equivalent body of an entity, with which the former Minister had significant official dealings during the former Minister's last year of service as a Minister, or

(c) act on a commercial basis in connection with any ongoing matter in connection with which the former Minister, while in office, directly acted for or advised a department of the public service or a Provincial agency involved in the matter.

(2) For the purposes of subsection (1), a former Minister has had significant official dealings with a department of the public service, Provincial agency, person or entity if the former Minister, while in office, was directly and substantively involved with the department, Provincial agency, person or entity in an important matter.

(3) Subsection (1) does not apply

(a) to any contract with or benefit from the Crown if the conditions on which and the manner in which the contract or benefit is awarded, approved or given are the same for all persons similarly entitled, or if the award, approval or grant results from an impartially administered process open to a significant class of persons, or

(b) to an activity, contract or benefit if the Ethics Commissioner has exempted the activity, contract or benefit from the operation of subsection (1) and the former Minister observes and performs any conditions on which the Ethics Commissioner has granted the exemption.

(4) A former Minister who contravenes this section and who at the time of the contravention is a Member of the Legislative Assembly breaches this Act.

(5) A former Minister who contravenes this section and who at the time of the contravention is not a Member of the Legislative Assembly is guilty of an offence and liable on summary conviction to a fine not exceeding $20 000.

Breach for awarding contracts

30 A Minister breaches this Act if the Minister knowingly awards or approves a contract or gives a benefit to a former Minister who is acting in contravention of section 29.

PART 7

ETHICS COMMISSIONER

Appointment

31(1) There shall be appointed, as an officer of the Legislature, by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly, an Ethics Commissioner to carry out those duties and functions set out in this Act or any other enactment prescribed by the Lieutenant Governor in Council.

(2) The Ethics Commissioner may not be a Member of the Legislative Assembly.

(3) The Ethics Commissioner may be appointed on either a full-time or part-time basis.

1991 cC-22.1 s31;1995 c17 s19

Term of office

32(1) Unless the office sooner becomes vacant, a person appointed as Ethics Commissioner holds office for 5 years

(a) from the date of that person's appointment under section 31, or

(b) from the date on which that person's appointment under section 35 or 45 is confirmed under that section.

(2) A person holding office as Ethics Commissioner continues to hold office after the expiry of that person's term of office until that person is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.

Resignation

33 The Ethics Commissioner may at any time resign from office by delivering a written resignation to the Clerk of the Legislative Assembly.

Suspension or removal

34(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Ethics Commissioner from office for cause or incapacity.

(2) At any time the Legislative Assembly is not sitting the Lieutenant Governor in Council, on the recommendation of the Standing Committee, may suspend the Ethics Commissioner from office for cause or incapacity, but the suspension shall not continue in force beyond the end of the next sitting of the Legislative Assembly.

1991 cC-22.1 s34;1995 c17 s19

Vacancy

35(1) If the Ethics Commissioner dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with section 31 or this section.

(2) If the vacancy occurs while the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly before the close of that sitting, subsection (3) applies as if the vacancy had occurred while the Legislative Assembly was not sitting.

(3) If the vacancy occurs while the Legislative Assembly is not sitting, the Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an Ethics Commissioner to fill the vacancy and unless the office sooner becomes vacant, the person so appointed holds office until the appointment is confirmed by the Legislative Assembly.

(4) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next sitting, the appointment lapses and there is deemed to be another vacancy in the office of Ethics Commissioner.

Remuneration

36 The Ethics Commissioner shall be remunerated as determined by the Standing Committee, and it shall review that remuneration at least once a year.

Oath

37(1) Before commencing the duties of office, the Ethics Commissioner must take an oath to faithfully and impartially perform the duties of the office and not, except as provided in this Act, to disclose any information received by the Office of the Ethics Commissioner under this Act.

(2) The oath shall be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.

Office of the Ethics Commissioner

38(1) There shall be a department of the public service of Alberta called the Office of the Ethics Commissioner consisting of the Ethics Commissioner and those persons employed pursuant to the *Public Service Act* as are necessary to assist the Ethics Commissioner in carrying out the Ethics Commissioner's duties and functions under this or any other enactment.

(2) The Ethics Commissioner may engage the services of any persons as are necessary to assist the Ethics Commissioner in carrying out the Ethics Commissioner's duties and functions.

(3) On the recommendation of the Ethics Commissioner, the Standing Committee may order that

(a) any regulation, order or directive made under the *Financial Administration Act*, or

(b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

be inapplicable to, or be varied in respect of, the Office of the Ethics Commissioner or any particular employee or class of employees in the Office of the Ethics Commissioner.

(4) An order made under subsection (3)(a) in relation to a regulation, order or directive made under the *Financial Administration Act* operates notwithstanding that Act.

(5) The *Regulations Act* does not apply to orders made under subsection (3).

(6) The chair of the Standing Committee shall lay a copy of each order made under subsection (3) before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(7) Every person employed or engaged by the Office of the Ethics Commissioner shall, before beginning to perform that person's duties under this Act, take an oath, to be administered by the Ethics Commissioner, not to disclose any information received by that person under this Act except as provided in this Act.

(8) If the Ethics Commissioner or any former Ethics Commissioner or a person who is or was employed or engaged by the Office of the Ethics Commissioner discloses information that is confidential under section 14(8), 24(1) or 41(3), that person is guilty of an offence and is liable to a fine not exceeding $20 000.

Financing of operations

39(1) The Ethics Commissioner shall submit to the Standing Committee in respect of each fiscal year an estimate of the sum that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Ethics Commissioner in that fiscal year.

(2) The Standing Committee shall review each estimate submitted pursuant to subsection (1) and, on the completion of the review, the chair of the Committee shall transmit the estimate to the Provincial Treasurer for presentation to the Legislative Assembly.

(3) If at any time the Legislative Assembly is not sitting the Standing Committee, or if there is no Standing Committee, the Provincial Treasurer,

(a) reports that the Ethics Commissioner has certified that in the public interest, an expenditure of public money is urgently required in respect to any matter pertaining to his office, and

(b) reports that either

(i) there is no supply vote under which an expenditure with respect to that matter may be made, or

(ii) there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,

the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by the Lieutenant Governor authorizing the expenditure of the amount estimated to be required.

(4) When the Legislative Assembly is adjourned for a period of more than 14 days, the Legislative Assembly is deemed, for the purposes of subsection (3), not to be sitting during the period of the adjournment.

(5) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the *Financial Administration Act* for the fiscal year in which the special warrant is signed.

(6) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(ii), the authority to spend the amount of money specified in the special warrant is, for the purposes of the *Financial Administration Act*, added to and deemed to be part of the supply vote to which the report relates.

(7) When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after it for granting to Her Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

General duties of Ethics Commissioner

40(1) It is a function of the Ethics Commissioner to promote the understanding by Members of their obligations under this Act by

(a) personal discussions with Members, and in particular when interviewing them about disclosure statements,

(b) commissioning the preparation and dissemination of written information about the obligations, and

(c) continuing contact with party caucuses and advising them as to what programs they might institute.

(2) Where this Act provides for the doing of anything by a time or within a prescribed period of time, the Ethics Commissioner may, prior to the expiration of the time, extend the time for the doing of that thing under this Act.

Binding advice and recommendations

41(1) A Member or former Minister may request the Ethics Commissioner to give advice and recommendations on any matter respecting obligations of the Member or former Minister under this Act.

(2) The Ethics Commissioner may in writing provide the Member or former Minister with advice and recommendations, which

(a) shall state the material facts either expressly or by incorporating facts stated by the Member or former Minister,

(b) shall be based on the facts referred to in clause (a), and

(c) may be based on any other considerations the Ethics Commissioner considers appropriate.

(3) Advice and recommendations under this section are confidential until released by or with the Member's or former Minister's consent.

(4) The Ethics Commissioner may make such inquiries as the Ethics Commissioner considers appropriate in order to provide advice and recommendations under this section.

(5) If a Member or former Minister has, with respect to advice and recommendations under this section,

(a) communicated the material facts to the Ethics Commissioner, and

(b) complied with any recommendations contained in the advice and recommendations of the Ethics Commissioner,

no proceeding or prosecution shall be taken against the Member or former Minister under this Act by reason only of the facts so communicated and the Member's or former Minister's compliance with the recommendations.

General advice and recommendations

42(1) The Ethics Commissioner may give advice and recommendations of general application to Members or former Ministers or a class of Members or former Ministers on matters respecting obligations of Members and former Ministers under this Act, which may be based on the facts set out in the advice and recommendations or on any other considerations the Ethics Commissioner considers appropriate.

(2) With respect to advice and recommendations given under subsection (1), no proceeding or prosecution shall be taken against a Member or former Minister under this Act by reason only of the facts and considerations stated in the advice and recommendations and the Member's or former Minister's compliance with the advice and recommendations.

Actions against Ethics Commissioner and others

43(1) No action lies against the Ethics Commissioner or any former Ethics Commissioner or any other person who is or was employed or engaged by the Office of the Ethics Commissioner for anything done in good faith under this Act.

(2) No action lies against a person who in good faith provides information or gives evidence in a proceeding under Part 5 to the Ethics Commissioner or to a person employed or engaged by the Office of the Ethics Commissioner.

Annual report

44(1) The Ethics Commissioner shall, at any times that the Ethics Commissioner considers appropriate, and at least annually, report in writing to the Speaker of the Legislative Assembly

(a) the names of Members who, in the opinion of the Ethics Commissioner,

(i) have not filed disclosure statements or returns within the time limited by section 11 or 15, as the case may be, or

(ii) have not made the full disclosure required by section 12,

and

(b) generally on the affairs of the Office of the Ethics Commissioner.

(2) The Speaker of the Legislative Assembly shall lay a copy of the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

PART 8

TRANSITIONAL, CONSEQUENTIAL AND COMMENCEMENT

Appointment of first Ethics Commissioner

45 *For the purposes of appointing the first Ethics Commissioner, if the Legislative Assembly is not sitting, the Lieutenant Governor in Council on the recommendation of the Standing Committee may appoint an Ethics Commissioner, and unless the office sooner becomes vacant, the person so appointed holds office until the appointment is confirmed by the Legislative Assembly.*

Breaches prior to coming into force of Act

46(1) *Subject to subsection (2), no proceeding may be commenced under this Act in respect of an alleged breach of this Act committed prior to the coming into force of Part 5.*

(2) Where a Member is liable to disqualification under section 27(1)(b) or (c), 28 or 29 of the Legislative Assembly Act before the coming into force of Part 5 of this Act and no proceeding has been commenced under the Legislative Assembly Act, the proceeding shall be commenced in accordance with Part 5 of this Act.

Blind trusts

47(1) *In this section, "prior trust" means*

(a) a blind trust under the Legislative Assembly Act, or

(b) a trust established before the coming into force of section 1(7) under the "Premier's Guidelines" tabled in the Legislative Assembly on May 2, 1973.

(2) A Member who has a prior trust and wishes to establish a blind trust under this Act may within 60 days after this section comes into force apply to the Ethics Commissioner for advice and recommendations relating to the transfer of publicly-traded securities from the prior trust to a blind trust established in accordance with this Act.

(3) A Member does not breach this Act if a prior trust contains securities in a private corporation that on the coming into force of section 1(7) would put the Member in breach of this Act, if the Member takes such steps as the Ethics Commissioner recommends to remove the grounds of the breach as soon as the Ethics Commissioner considers practicable in the circumstances.

48 to 53 *(These sections make consequential amendments to other Acts. The amendments have been incorporated in those Acts.)*

Coming into force

54 *This Act, except sections 1(1)(c), (d) and (m), 45, 51 and 53(a) and Part 7, comes into force on Proclamation.*

(NOTE: Proclaimed in force March 1, 1993.)

SCHEDULE

DISQUALIFYING OFFICES

Part 1
Judicial Offices

1. Judges of the Provincial Court of Alberta

Part 2

Offices of the Legislature

1. The Auditor General of Alberta under the Auditor General Act
2. The Ombudsman under the Ombudsman Act
3. The Chief Electoral Officer under the Election Act
4. The Ethics Commissioner under the Conflicts of Interest Act
5. The Information and Privacy Commissioner

Part 3

Other Disqualifying Offices

The office of chairman or member of any of the following:

Agriculture Financial Services Corporation
Alberta Agricultural Products Marketing Council
Alberta Apprenticeship and Industry Training Board under the Apprenticeship and Industry Training Act
Alberta Automobile Insurance Board
Alberta Building Standards Council
Alberta Cancer Board
Alberta Dairy Control Board
Alberta Educational Communications Corporation
Alberta Electric Energy Marketing Agency
Alberta Sport Council
Alberta Gaming Commission appointed under section 207 of the Criminal Code (Canada)
The Alberta Government Telephones Commission
Alberta Human Rights Commission
The Alberta Liquor Control Board
Alberta Social Housing Corporation
Alberta Motion Picture Development Corporation
Alberta Motor Transport Board
Alberta Municipal Financing Corporation
Alberta Order of Excellence Council
Alberta Petroleum Marketing Commission
Alberta Racing Commission
Alberta Securities Commission
Appeal board under section 537 of the Insurance Act

Appeal board under the Farm Implement Act
Appeal board under the Freehold Mineral Rights Tax Act
Appeal board under the Mortgage Brokers Regulation Act
Appeal board under the Real Estate Agents' Licensing Act
Appeal panel under the Dependent Adults Act
Board of Censors under the Amusements Act
Board of Directors of the Alberta General Insurance Company
Board of Directors of the Alberta Opportunity Company
Board of Examiners in Podiatry
Board of governors of a public college under the Colleges Act
Board of governors of a technical institute under the Technical Institutes Act
Board of governors of a university under the Universities Act
Board of Governors of the Banff Centre for Continuing Education
Board of a hospital district incorporated under section 8 of the Hospitals Act
Board of review under section 619 of the Criminal Code (Canada)
Board of trustees of Northland School Division No. 61
Body incorporated under section 6 of the Universities Act
The Crimes Compensation Board
Driver Control Board
Energy Resources Conservation Board
Fatality Review Board
Health Disciplines Board
Hospital Privileges Appeal Board
Interim governing authority of a technical institute under the Technical Institutes Act
Interim governing body or governing authority of a university under the Universities Act
Irrigation Council
Judicial Council for the Judges of the Provincial Court
Labour Relations Board
Land Compensation Board
Land Conservation and Reclamation Council
Law Enforcement Appeal Board
Local Authorities Pension Plan Board of Trustees
Management Employees Pension Board
Members of the Legislative Assembly Pension Plan Board
Municipal Government Board
Natural Resources Conservation Board
Occupational Health and Safety Council
Ophthalmic Dispensers Examining Board

Private Vocational Schools Advisory Council under the Private Vocational Schools Act
Provincial Health Board under the Regional Health Authorities Act
Public Emergency Tribunal under the Burial of the Dead Act
Public Health Advisory and Appeal Board
Public Service Pension Board
Public Utilities Board
Regional Health Authority under the Regional Health Authorities Act
Review panel under the Mental Health Act
Safety Codes Council under the Safety Codes Act
School Buildings Board
Special Areas Board
Special Forces Pension Board
Students Finance Board
Surface Rights Board
Teaching Profession Appeal Board under the Teaching Profession Act
Universities Academic Pension Board
The Workers' Compensation Board

1991 cC-22.1 Sched;1992 c21 s9;1993 cP-30.7 s10; 1994 cA-30.1 s39(1);1994 cF-18.5 s94; 1994 cM-26.1 s642(11);1994 cR-9.07 s25(6); 1994 c19 s3;1994 c23 s10;1995 c15 s3; 1995 c24 s100;1995 c28 s66

FEB 04 1993

Alberta

MEMORANDUM

DEPARTMENT OF JUSTICE

Room 227, Bowker Building
9833 - 109 Street

FROM: R. S. (Dick) Fowler, Q.C.
Minister of Justice & Attorney General
320 Legislature Building

OUR FILE REFERENCE:

YOUR FILE REFERENCE:

TO: Deputy Ministers and Senior Officials

DATE: February 3, 1993

TELEPHONE: 427-2339

SUBJECT: **FINANCIAL DISCLOSURE AND CONFLICTS OF INTEREST**

Since 1975 all addressees of this memorandum (herein the Senior Officials) have been required, by the Premier's Guidelines, to make full disclosure of their land holdings and business interests.

In 1989 a panel chaired by Chief Judge Wachowich was commissioned by Order-in-Council to investigate and report on conflict of interest rules applicable to members of the Executive Council, the Legislative Assembly and senior public servants in Alberta. As a result of the recommendations contained in the Wachowich report the Conflicts of Interest Act (the "Act") was assented to, and those portions of the Act establishing the Office of the Ethics Commissioner were proclaimed in force, on June 25, 1991. The remaining portions of the Act will come into force on March 1, 1993.

Cabinet has decided that certain recommendations of the Wachowich report, relating to Senior Officials, should be implemented. This will involve a wider scope of financial disclosure and additional provisions, directed at preventing actual or perceived conflicts of interest, and will replace the Premier's Guidelines as they pertain to Senior Officials.

The system of financial disclosure to be implemented by this memorandum will be similar to that to which Ministers of the Crown and Members of the Legislative Assembly will become subject on the effective date of the Act and will also be in addition to the obligations now imposed upon all public servants by the Code of Conduct and Ethics (the "Code") or any other standard of conduct and ethics applicable to you. However, unlike Ministers and Members, the financial disclosure to be required of Senior Officials will not be made public.

Senior Officials will be required to complete and file with the Ethics Commissioner disclosure statements, in a form approved from time to time by the Ethics Commissioner, regarding their assets, liabilities and financial interests and, so far as known to the Senior Official, the assets, liabilities and financial interests of their spouse, each minor child and any private corporation controlled by any one or more of them.

Spouse includes a party to a relationship between a man and a woman who are living together on a bona fide domestic basis but does not include a spouse who is living apart from a Senior Official if the Senior Official and the spouse have separated pursuant to a written separation agreement or if their support obligations and family property have been dealt with by a court order.

It will not be necessary to disclose obligations being incurred for ordinary living expenses that will be discharged in the ordinary course of the Senior Official's affairs.

It will be necessary to include in the disclosure statements to be filed a statement of the income that the Senior Official and, so far as is known to the Senior Official any other person mentioned above, has received in the preceding 12 months or expects to receive in the next twelve months and, to the extent required by the Ethics Commissioner, the sources of such income.

A copy of the disclosure statement which has been approved by the Ethics Commissioner is attached for your information. Disclosure statements for each person included in the scope of this policy must be filed within 60 days of a date to be determined by the Ethics Commissioner, within 60 days after becoming a Senior Official, in each subsequent year at the time specified by the Ethics Commissioner and within 30 days of the occurrence of any material change to the information contained in a then current disclosure statement. Senior Officials will also be required to notify the Ethics Commissioner of any new or changed responsibilities. Copies of the form of disclosure statements to be completed and filed will be forwarded to you under separate cover by the Ethics Commissioner, who will also advise of the process to be followed.

Completed disclosure statements will be filed with, and reviewed by, the Ethics Commissioner. The Ethics Commissioner may also meet with any Senior Official and their spouse, if available, to ensure that adequate disclosure has been made and be available to offer advice to the Senior Official if requested to do so. Senior officials will be protected when acting in accordance with recommendations made by the Ethics Commissioner, after full disclosure of relevant facts.

The Ethics Commissioner will report any concerns that he might have concerning the disclosure statements or matters arising from them to both the Minister of Justice and Attorney General and the responsible Minister, if he is unable to resolve such concerns with the Senior Official involved.

In addition effective April 1, 1993 Senior Officials will be prohibited from:

(a) owning publicly traded securities (as that term is defined in the Act) if the business of the corporation that issues such securities could reasonably be materially affected by decisions made by the Senior Official in the course of carrying out their duties, unless such securities are held in a blind trust approved by the Ethics Commissioner;

(b) taking part in a decision in the course of carrying out the Senior Officials's duties where the Senior Official has reasonable grounds to believe that the decision might further a private interest of the Senior Official, the spouse or minor child of a Senior Official, or a private corporation controlled by any one or more of them;

(c) using their office or powers to influence or to seek to influence a decision made or to be made by or on behalf of the Crown that might further a private interest of the Senior Official, the spouse or minor child of a Senior Official, or a private corporation controlled by any one or more of them;

(d) using or communicating information not available to the general public that was gained by the Senior Official in the course of carrying out the Senior Official's office or powers to further a private interest of the Senior Official, the spouse or minor child of a Senior Official, or a private corporation controlled by any one or more of them

The prohibitions in subsection (b), (c) and (d) will apply without limiting the provisions of any applicable code of conduct and ethics that might also be applicable to the Senior Official.

For the purposes of the prohibition set out above a "private interest" will not include an interest in a matter (a) that is of general application, (b) that affects a person as one of a broad class of the public, (c) that affects the remuneration or benefits of a Senior Official, (d) that is trivial, or (e) an interest of a Senior Official relating to publicly-traded securities in the Senior Official's blind trust if made or instituted after one hundred and eighty (180) days of the date that such securities are placed in the blind trust. The terms and conditions, including the trustee, of blind trusts must be approved by the Ethics Commissioner.

The Ethics Commissioner may also investigate complaints received, after notifying the Senior Official, the responsible Minister and the Minister of Justice and Attorney General of the complaint. Recommendations arising from such investigations will be made to the responsible Minister.

In implementing these enhanced requirements I wish to point out that the Wachowich report specifically stated that the review panel did not see "..., any evidence of a conflict of interests crisis among elected or appointed officials in Alberta today". The review panel went on to state that "an adequate conflicts of interests system is necessary. Given responsible elected and appointed officials, and given a public which is conscious of the need for integrity in government, such a system can guard against abuses and maintain public confidence in the institutions of government." These new measures will continue the leadership role that Alberta has taken regarding this matter.

Yours truly,

R. S. (Dick) Fowler, Q.C.
Minister of Justice and
Attorney General

Enclosure

A CODE OF CONDUCT AND ETHICS FOR THE PUBLIC SERVICE OF ALBERTA

1. Introduction

The people of Alberta have a right to public service which is conducted with efficiency, impartiality and integrity. It is this special obligation which demands that there not be, nor seem to be, any conflict between the private interests of employees and their responsibility to the public.

The range and complexity of government activities is such that it is not possible to produce a list of prohibitions which permits uniform application; the following sections are therefore issued as guidelines to departmental administrators and employees. The sections are not intended to be exhaustive and if other questions arise, they should be settled in accordance with the general principles in this code.

2. Administration

2.1 This code applies to:

(a) all employees appointed pursuant to section 17 of the Public Service Act (R.S.A. 1980) including deputy ministers, and

(b) all persons hired as wage employees pursuant to section 26 of The Public Service Act (R.S.A.1980), and

(c) all persons employed on a contractual basis pursuant to section 29 of the Public Service Act (R.S.A. 1980), unless exemptions are specifically made in the contract of employment, and the term "employee" wherever it is used in this code shall include all of the above.

2.2 The responsibility for administration of this code, and for issuing the instructions necessary to implement it rests with the deputy head of each department.

2.3 The responsibility for administration of this code with respect to deputy heads rests with the Executive Council.

2.4 A deputy head may issue instructions, to employees of his department, which modify, vary or add to matters dealt with in this code, provided that they are not more permissive than this code.

3. Outside Employment

3.1 Employees may take supplementary employment, including self-employment, unless such employment:

(a) causes an actual or apparent conflict of interest, or

(b) is performed in such a way as to appear to be an official act, or to represent a Government opinion or policy, or

(c) unduly interferes through telephone calls, or otherwise, with regular duties, or

(d) involves the use of Government premises, equipment, or supplies, unless such use is otherwise authorized.

3.2 Where it is evident that a conflict of interest might arise in taking supplementary employment, it is the duty of employees to notify their supervisor in writing as to the nature of the employment.

3.3 Employees shall not accept monetary or other payment in addition to normal salary or expenses for duties which they perform in the course of their public service employment.

3.4 Employees may, with the consent of their deputy head, teach courses at institutions for a fee during normal working hours provided that:

(a) acceptable arrangements can be made for the employee to perform all regular duties, and

(b) course preparation and marking is done on the employee's own time, and

(c) no other conflict arises.

3.5 Where infringement upon normal duties is unavoidable the deputy head may require that all or part of the fee received under 3.4 be paid to the Provincial Treasurer.

4. Investment and Management of Private Assets

4.1 Where the business or financial interests of employees, their spouses or of their children under the age of eighteen, are affected or appear to be affected by actions taken or decisions made in the course of their public service employment, the employees shall disclose those interests to their deputy head, in writing.

4.2 If an actual or potential conflict of interest situation exists as a result of disclosure under 4.1 the business or financial interests may, with the approval of the deputy head, be placed in a blind trust.

4.3 A deputy head may require that employees in specific positions disclose specific types of business interest which would, in the opinion of the deputy head, create a conflict of interest.

4.4 No employee who is involved in the decision making process for the acquisition or sale of assets for the Crown or for the provision of services to the Crown, shall acquire such assets from or sell such assets to the Crown or provide such services to the Crown unless the Treasury Board approves the transaction.

5. Political Activity

5.1 Subject to sections 5.2 and 5.3 there is no restriction upon participation in political activity by employees save that they must not participate directly in the solicitation of contributions within the meaning of the Election Finances and Contributions Disclosure Act, the Election Expenses Act (Canada), or the Canada Elections Act.

5.2 Employees who occupy positions in the Executive Manager classes of the Management Compensation Plan and those referred to in O.C. 709/82 as amended, may not seek nomination as a candidate in a federal or provincial election nor hold office in a political party or constituency association.

5.3 Employees who wish to run as candidates in a provincial or federal election must take leave of absence without pay commencing on the day after the writ for the election is issued or on the day that their candidacy is publicly announced whichever is the later, and the restriction of solicitation in section 5.1 shall not apply to such employees once a public declaration of candidacy has been made.

5.4 An employee who is elected to federal or provincial office shall resign effective the last day before the commencement of leave of absence without pay.

5.5 An employee who seeks election and is not elected shall be entitled to return to the same or similar employment, effective the day after the election.

5.6 An employee who is a candidate for municipal office shall, if elected, be subject to the provisions of this code regarding outside employment.

5.7 Employees described in section 5.2 may be permitted to be candidates in a municipal election if the Commissioner, having regard to the general principles of this code, so approves.

6. Public Statements

6.1 Employees who speak or write publicly are responsible for ensuring that they do not release information in contravention of the oath of office set out in section 20 of the Public Service Act (RSA 1980).

6.2 The responsibility for maintaining the confidentiality of information or documents includes the responsibility for ensuring that such information or documents are not directly or indirectly made available to unauthorized persons.

7. Acceptance of Gifts

7.1 An employee shall not accept a gift, favour or service from any individual, organization or corporation, other than: the normal exchange of gifts between friends; the normal exchange of hospitality between persons doing business together; tokens exchanged as part of protocol; or the normal presentation of gifts to persons participating in public functions.

8. Dealings with Relatives

8.1 Employees who exercise a regulatory, inspectional, or other discretionary control over others shall, wherever possible, disqualify themselves from dealing with relatives, including parents, parents-in-law, brothers and sisters, and grandparents, with respect to those functions.

9. Penalties

9.1 This code is additional to any statute pertaining to the actions of employees.

9.2 An employee who does not comply with any provisions of this code may be subject to dismissal or other disciplinary action pursuant to section 25 of the Public Service Act (RSA 1980).

10. Review of Decision

10.1 Where a difference of opinion exists as to whether a conflict of interest exists as a result of a declaration under section 3.2 or 4.1, or under a similar section of a departmental code an employee may request that the decision of the deputy head be reviewed by the Treasury Board.

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Alberta
GOVERNMENT OF ALBERTA

THE PANELISTS

PATRICIA NEWMAN is Mayor of Innisfail, a post she has held for three terms. She is active in her community and in local government organizations in Alberta.

FRANCIS M. SAVILLE, QC, practices law at Milner/Fenerty in Calgary. He is extensively involved in community work and is a director of Canadian Occidental Petroleum, Hughes Aircraft of Canada and Mullen Trucking.

ALLAN TUPPER is Professor of Political Science and Associate Vice-President (Government Relations) at the University of Alberta where he has taught since 1976.

LIST OF INTERVIEWS

December 6 1995

Ms. Karen South (Senior Administrator), Mr. Frank Work (Director and General Counsel), Office of the Ethics Commissioner, Province of Alberta, Edmonton.

December 7 1995

Mr. J. E. Dixon, Public Service Commissioner, Mr. Neil McCrank QC, Deputy Attorney-General, Mr. Vance A. MacNichol, Deputy Minister to Executive Council, and Mr. A. D. O'Brien, Deputy Provincial Treasurer (Management and Control), (via conference call).

December 8 1995

Hon. Ralph Klein, MLA Calgary Elbow, Premier of Alberta, Edmonton.

December 10 1995

Mr. Robert Clark, Ethics Commissioner, Province of Alberta, Calgary.

December 12 1995

Mr. Ted Hughes, Conflict of Interest Commissioner, Province of British Columbia, (via conference call).

December 12 1995

Mr. Howard Wilson, Ethics Counsellor, Government of Canada (via conference call).

LIST OF INTERVIEWS

January 4, 1996

Professor John Langford, University of Victoria (telephone call with Allan Tupper).

Please attach this sheet to your copy of the *Conflicts of Interest Act* Review Panel Report entitled "Integrity in Government in Alberta: Towards the Twenty First Century." The report was released in Edmonton on January 16, 1996. The Panel members were: Patricia Newman, Francis Saville, Q.C., and Allan Tupper (Chair).

ERRATUM

Conflicts of Interest Act Review Panel Report, page 48:

The last sentence should read "It does not have the force and significance of law."

Allan Tupper, Chair
Conflicts of Interest Act Review Panel

11.0 Appendix 4: Report, Standing Committee on Industry, Science & Technology

TRANSPARENCY IN THE INFORMATION AGE: THE LOBBYISTS REGISTRATION ACT IN THE 21st CENTURY

Standing Committee on
Industry, Science and Technology

Susan Whelan, M.P.
Chair

June 2001

TABLE OF CONTENTS

CHAIR'S FOREWORD

INTRODUCTION

1. Scope of the Study

2. Evaluating the Recommendations

3. Overview of the System

4. Issues for Discussion

CHAPTER 1 - THE REGISTRY - COMPLIANCE AND ENFORCEMENT

1. Compliance and Enforcement

(a) The Role of the Ethics Counsellor

(b) Problems of Interpretation

(c) Two-Year Limitation on Summary Conviction Proceedings

CHAPTER 2 - THE LOBBYISTS REGISTRY - REGISTERING AND UPDATING

1. An "Organization" Approach to "Corporate" Lobbyists

2. "Qualitative" Registration

3. Closing Loopholes

4. Anti-Avoidance

5. Updating filings

6. Penalties

CHAPTER 3 - DISCLOSURE AND TRANSPARENCY

1. Dual Reporting System

2. Identifying Individual Contacts

3. Organizational Disclosure

4. Spending Disclosure

5. Fee Disclosure

6. Contingency Fees

7. Tax Deductibility of Lobbying Fees

8. Solicitor-Client Confidentiality

CHAPTER 4 - CONFLICT OF INTEREST AND ACCESS TO GOVERNMENT

1. "Chinese Walls"

2. Pre-empting conflict

3. The Cooling Off Period

4. Integrity and Access to Government

CHAPTER 5 - POLICY MAKING IN THE INFORMATION AGE - LOBBYING, ACCESS AND THE INTERNET

1. The Power of the Internet

2. A Challenge for Governments

3. Raising Public Awareness

4. The Role of Parliamentarians

CONCLUSION

LIST OF RECOMMENDATIONS

APPENDIX A: LIST OF WITNESSES

REQUEST FOR GOVERNMENT RESPONSE

DISSENTING OPINION: BLOC QUÉBÉCOIS

MINUTES OF PROCEEDINGS

Next

CHAIR'S FOREWORD

In March of 2001 the House of Commons Standing Committee on Industry, Science and Technology undertook the four-year review of the administration and operation of the *Lobbyists Registration Act*. The Committee approached the hearings with a broad mandate, allowing the issues to emerge from the discussion itself. While the Minister did request that we look at a few particular issues, the Committee did not limit itself to these but rather heard evidence on a wide range of issues. Our role was to determine if the lobbyists registration system is working well. This was addressed in the context of the four key principles set out in the Act's preamble:

- free and open access to government is an important matter of public interest;
- lobbying public office holders is a legitimate activity;
- it is desirable that public office holders and the public be able to know who is attempting to influence government;
- a system of registration of paid lobbyists should not impede free and open access to government.

The question, then, for the Committee's consideration was this: is the Act working to achieve in practice the right balance of the four principles? The inquiry often took us well beyond the *Lobbyists Registration Act*, into issues of ethics in government and conflict of interest; of election financing and the real nature of influence and, perhaps most importantly, transparency.

But what do we mean when we say "transparency"? The word means many different things in the context of modern government: it means that the process by which government makes decisions must be one that people can understand, a process which they can access, a process which provides them with the opportunity to make their voices heard, and to have their say in the laws that will govern and affect their lives. As well, transparency means that the public should be able to find out exactly who is talking to government, and what they are talking about. For that reason, understanding transparency means broadening the discussion beyond narrow questions of how much information lobbyists should be required to disclose; of course, that discussion must also take place. It is important that the public has enough information to know what is going on in government. But, even more importantly, the discussion must be about how we can ensure that all Canadians ? not just those working within a kilometre of Parliament Hill ? can have real, meaningful input in the process by which they are governed.

Perhaps one of the most important ideas to emerge from our discussions is how the Internet is changing the way policy is made, and the way people are talking to their government. Members of Parliament, of course, have already begun to experience a

significant increase in E-mail from constituents. The Committee heard that, currently, at least one government department provides on its Web site a "consultations" portal ? at the click of a mouse, Canadians can now make their views known and not just to their Member of Parliament. The Internet, though only in the early stages of development, permits for the first time the possibility of seeing clearly into, and getting involved in, the inner workings of the bureaucracy: Web sites may provide detailed listings of departmental personnel, their responsibilities, phone numbers and E-mail addresses; department Web sites provide links to relevant legislation, regulations, guidelines, policy manuals and even discussion papers. These are just a few of the examples of the level of transparency that may be possible. The growth of the Internet will change the way governments make decisions, and its impact will be felt only more strongly in coming years. Both Members of Parliament and departmental policy makers

may look forward to far more direct, individual input in the policy-making process.

In a sense it is really impossible to talk about the lobbyists registration system without discussing the role of the Internet. Most obviously, the registry itself is Internet-based. Lobbyists register and update their filings electronically. The registry is fully searchable, allowing anyone to determine with a few mouse clicks who is talking to government and what they are talking about. As well, the Internet allows the timely reporting of lobbyists who fail or neglect to register.

The majority of witnesses expressed the view that the system works well. This is perhaps best understood by looking at the information that the system provides, and what that information reveals about the discussions that are taking place between lobbyists and government; about the views being expressed and about what information is changing hands. The four principles, it might be said, recognize implicitly the critical role of information in the policy-making process. Information is the most valuable input in that process, and getting complete, up-to-date, and accurate information is always a priority for legislators and policy-makers. This information comes from stakeholders, from people or businesses with an interest in the outcome; people who are concerned enough to make the effort to speak out, to make their voices heard and their views known. Thousands of Canadians do this every year, in fact, when they write letters to their MP. In addition, individuals and businesses may join together as public interest groups or trade and industry associations to discuss issues and speak with government ? i.e. lobby ? with a strong and unified voice.

The process of lobbying is often portrayed as the exclusive reserve of "powerful and influential lobbyists," using their "connections" to make "secret deals." This is far too simple a picture. The reality is that the overwhelming preponderance of government decision making ? and, therefore, lobbying efforts ? are directed not at legislators or legislation, nor even at ministers of the Crown. Rather, most lobbying is "low-level" activity aimed at many levels of the public service.

Another important idea that was discussed is how government decision making and the role of lobbyists has changed since the Act was passed in 1989 and, indeed, since the major amendments of 1995. The Act was conceived as an antidote to the conflict of interest and influence-peddling scandals that beset previous governments. The solution was not to regulate lobbying ? which remains a valuable and legitimate activity ? but rather to make the system transparent by requiring people or groups to disclose their lobbying activities. The general consensus is that the Act has succeeded in this ? it provides precisely the kind of transparency for which it was created: lobbyists do, in fact, register. Today, by examining the registry, we can find out who is lobbying what department and what exactly they are discussing. Why is it important that we know this? Simply put, by knowing who is talking to government, the public (and, of course, other lobbyists) can form a clear picture of the information that is being provided and the policy options that are being considered. Ultimately, the registry makes it possible to achieve a true plurality of views without an unduly onerous compliance mechanism.

Compliance with the Act is an issue the Committee considered at some length ? is it being complied with? Can it be improved? In assessing the many recommendations that were brought forward, the Committee remained mindful of the importance of balancing two important objectives: first, ensuring that the Act promotes disclosure of enough information to achieve transparency but, at the same time, that we do not require information merely for its own sake, because it "might" tell us something. More information is not necessarily better information; the key is to have the right information. Requiring more information will raise the cost of the system ? for government the cost of collecting, reviewing and confirming the information provided; and for registrants, the administrative cost of compliance. The challenge is to determine the right level of disclosure to ensure a level playing field, a field in which all Canadians can have access to the decision-making process.

▶ Next

INTRODUCTION

1. Scope of the Study

This report details the findings of the House of Commons Standing Committee on Industry, Science and Technology's four-year review of the *Lobbyists Registration Act* (hereinafter the LRA or the Act).

The LRA establishes legal requirements for the registration of lobbyists. It also prescribes penalties and procedures for investigating and prosecuting breaches of those requirements. As well, the Act provides for the appointment of a Registrar of Lobbyists to administer the system, and the appointment of another official to investigate possible breaches of the *Lobbyists Code of Conduct* (hereinafter the Lobbyists Code). The person appointed to this role is the Ethics Counsellor, a function that is distinct from his other role as Ethics Counsellor, wherein he advises on the application of the *Conflict of Interest and Post-Employment Code for Public Office Holders* (hereinafter referred to as the Conflict of Interest Code). The Ethics Counsellor's role under the LRA is properly within the scope of the current study, and the Committee heard considerable evidence and many recommendations on subjects related to that role: the process by which the Ethics Counsellor is appointed, as well as alternatives to it; and the creation of a conflict of interest code for MPs. The Committee remained mindful that some matters we discussed were not, in fact, related to the LRA; for that reason, although the issues were discussed, we have not made them the subject of any recommendations in this report.

2. Evaluating the Recommendations

In evaluating the proposals brought forward by witnesses, the first question the Committee addressed was whether, in fact, the subject matter was one that flowed from the LRA. Issues such as the post-employment "cooling off" period, during which certain public office holders are prohibited from engaging in lobbying activities, is a subject addressed in the Conflict of Interest Code, and so fell outside the scope of the current study. For that same reason, there is no discussion in this report of creating a conflict of interest code for Parliamentarians. This is not to say that such a code may not be desirable, but that discussion is clearly beyond the current study.

Still, the Committee heard valuable evidence about how the current system is operating and several recommendations as to how it might be improved. But according to what principles are the recommendations to be evaluated? Parliament clearly established those principles in the preamble to the LRA, which recognizes that free and open access to government is an important matter of public interest, and that lobbying public office holders is a legitimate activity. Those principles also require that public office holders and the public be able to know who is attempting to influence government, without impeding free and open access to government.

The Committee attempted to evaluate the recommendations with a view to balancing the four principle objectives of the Act. For this reason, we considered carefully the calls for more disclosure (for example, disclosure of fees or of money spent on lobbying campaigns), with the important question in mind: would increasing the volume of disclosure actually achieve greater transparency? Or would it merely increase the costs of administration and compliance without providing any corresponding benefit?

3. Overview of the System

For the purposes of the Act lobbyists are defined as individuals paid to make representations with the goal of influencing federal public office holders. The Act requires lobbyists to register and disclose certain information. The information disclosed is made public through a computerized registry system. The Act distinguishes among three types of lobbyists:

An individual who lobbies on behalf of a client must register as a *Consultant Lobbyist.*

An employee of a corporation whose job involves a significant amount (20%) of lobbying for their employer must register as an *In-House Lobbyist (Corporate).*

The senior officer of an organization that pursues non-profit objectives must register as an *In-House Lobbyist (Organization)* when one or more employees lobby and where the total lobbying duties of all employees constitute a significant part (20%) of the duties of one employee.

The Act requires that lobbyists submit certain information in returns and notify the Registrar of any changes to information previously submitted, including termination of lobbying activity. This information is submitted in a form and manner prescribed by regulation; as such, the forms and regulations function as an integral part of the implementation of the Act. Techniques such as checklists and narrative statements are used to facilitate the collection of information.

Not all lobbyists or all lobbying activities are covered by the Act. Only paid lobbyists are required to register; unpaid lobbyists are not. The statute covers only direct attempts to influence certain government decisions. Thus, lobbyists have to register only if there has been some form of direct contact or communication with a person holding public office. The Act aims only at disclosing lobbying efforts; it does not attempt to regulate lobbyists or the manner in which lobbying is conducted.

In addition to the Act, the *Lobbyists Code of Conduct* establishes standards of conduct for all lobbyists communicating with federal public office holders. The Lobbyists

Code forms a counterpart to the obligations that federal officials are required to observe in their interactions with the public and with lobbyists. Canada was the first country to reinforce its lobbyist disclosure rules with a code of conduct. The onus to comply with the Lobbyists Code rests on the Consultant Lobbyist, the In-House (Corporate) lobbyist or the senior officer of the organization doing the lobbying, as the case may be.

The Lobbyists Code begins with a preamble stating its purpose and context. This is followed by a series of principles that, in turn, are followed by specific rules. The principles establish a framework in terms of the goals and objectives to be attained, but they do not establish precise standards. The Lobbyists Code provides detailed requirements for behaviour in certain situations.

The Ethics Counsellor is charged with investigating breaches of the Lobbyists Code. His powers of investigation are triggered where there is an alleged breach of a rule. Where the Ethics Counsellor believes, on reasonable grounds, that a breach of the Lobbyists Code has occurred, he must investigate and prepare a report for Parliament. The Act does not prescribe penalties for breach of the Lobbyists Code; neither does it specify how Parliament is to respond to a reported breach of the Lobbyists Code.

Responsibility for administration of the information disclosure provisions of the Act and maintenance of the public registry is assigned to the Registrar, designated by the Registrar General of Canada (Minister of Industry). The Registrar heads the Lobbyists Registration Branch. The Registrar has no powers to investigate under the Act; matters requiring investigation are turned over to the RCMP.

Branch staff examines all forms submitted for completeness and clarity. Inconsistencies or obvious omissions are communicated to the lobbyist for correction or for supplementary information. The Registrar may verify and demand clarification of information submitted by lobbyists. The Act also authorizes the Registrar to issue advisory opinions and interpretation bulletins in order to provide greater certainty regarding the registration provisions. The Act sets out penalties for non-compliance or for submitting false or misleading information. There is a two-year statutory limitation period for enforcement proceedings commenced by way of summary conviction. More serious violations are punishable on indictment, for which there is no limitation period.

To give lobbyists an efficient system for registering and to give the public broad access to the information on lobbyists, both electronic registration, as well as access to data through the Industry Canada server, are free of charge.

4. Issues for Discussion

Committee hearings took place between March and May of 2001. Many issues emerged from the discussion, touching on many aspects of the public policy-making

process. The Committee approached the hearings with an open mind, As well, prior to the hearings, several issues had been suggested to the Committee for its review:

Whether the current *quantitative* guideline, which requires registration when lobbying is 20% or more of an employee's duties, should also include a qualitative sense; that is, should registration also be required where the lobbying would have an important effect or impact on the attainment by a company of its goals or objectives?

Confidentiality and conflict of interest: Can a firm provide advisory services to a government department while simultaneously representing a private sector client with interests in that same department?

The advisability of applying the In-House (Organization) approach to registering In-House (Corporate) lobbyists. Currently, the Act distinguishes between commercial "corporations," and "organizations," which include associations, chambers of commerce, trade unions, charitable societies, coalitions, etc. The filing requirements are substantially different between the two: the triggering element for either In-House (Corporate) or In-House (Organization) lobbyists is the same i.e. a "significant part" of the duties (defined as 20%). In-House (Corporate) lobbyists are individually responsible to register if 20% or more of their time is spent in lobbying activities. As a result, there may be several filings for a particular corporation, or none (i.e. if no employee spends more than 20% of his time lobbying). By contrast, In-House (Organization) lobbyist registration is triggered if the aggregated lobbying activity that the organization undertakes equals 20% of one employee's time. The result is a comprehensive filing setting out overall objectives of the organization along with a listing of all employees engaged in lobbying, no matter how much time is involved. The question for the Committee's consideration is whether it would be advisable to apply the In-House (Organization) approach to In-House (Corporate) lobbyists.

Another area of inquiry related to Consultant Lobbyists. Currently, the LRA requires that a Consultant Lobbyist advise the registrar within 30 days of any changes to a filing, including the termination of an undertaking. This is sometimes overlooked. The Minister asked the Committee to consider the advisability of amending the Act by adding a provision specifically requiring Consultant Lobbyists reconfirm their filing annually (or every six months) in order to ensure that registry information is timely and accurate.

Another issue to which the Committee was asked to direct its focus is the enforcement provisions,

specifically the adequacy of the two-year limitation for prosecuting violations of the Act. The Minister, in his letter to the Committee, expressed "no reason to believe this period creates a difficulty but it would be timely to take advantage" of the Committee's review to consider the issue, as well as other aspects of enforcement.

The Committee wishes to extend its sincere thanks to the many witnesses who came forward to contribute their thoughts to our study.

▶ Next

Français • Table of Contents
Previous ◀ ▶ Next

CHAPTER 1
THE REGISTRY - COMPLIANCE AND ENFORCEMENT

> We have had very good, excellent compliance with the Act. People do register. [Diane Champagne-Paul 19:09:25]
>
> There is considerable anecdotal evidence that many lobbyists simply decline to register. [Aaron Freeman 8:15:45].
>
> We believe that most active Consultant Lobbyists, In-House (Corporate) lobbyists, and In-House (Organization) lobbyists representing business are indeed registered in compliance with the Act. The same cannot be said however of paid lobbyists representing organizations outside the business sector.... [Jayson Myers 7:9:10]

The relationship between compliance and enforcement is clear: simply put, the enforcement mechanisms in the LRA aim at ensuring compliance by lobbyists. The two concepts are, in a sense, inversely related; if compliance is a problem, an argument exists to strengthen enforcement mechanisms. Where compliance rates are good, the suggestion is that enforcement mechanisms are adequate.

1. Compliance and Enforcement

According to the Registrar of Lobbyists, as of March 16, 2001, there were 785 registered Consultant Lobbyists, 301 registered In-House (Corporate) lobbyists and 364 registered senior paid officers for non-profit organizations and interest groups i.e. In-House (Organization) lobbyists. In large measure, the high rates of compliance are attributable to the ease of access to the system:

> One very important development has been our ability to use the Internet to ensure transparency as well as administrative efficiency. Today, 98% of registrations are filed electronically. Internet access using the *Strategis Website*, Industry Canada's gateway to the Internet, not only enables lobbyists to file their registration forms on-line, without charge, it also renders the registry completely available to the Canadian public on a 24-hour, seven-days-a-week basis, thus enabling anyone to conduct searches to retrieve information on lobbyists. [Diane Champagne-Paul 5:16:25]

There is every indication that the registry is a very-frequently used resource:

> ...For the period beginning with the 1st of April 2000 to March 11, 2001, there have been 30,033 visits to the Lobbyists' website with about 167,496 pages being accessed by the users during the same period, quite an impressive number for what may be called a small program. [Diane Champagne-Paul 5:16:25]

The accomplishments of the registry are even more impressive when one considers the size of its budget:

> The use of the Internet has also proven to be a very efficient use of limited available resources as it enables the Lobbyists Registration Branch to operate with the use of only two individuals on an annual budget of less than $200,000. [Diane Champagne-Paul 5:16:25]

One witness, Democracy Watch, did not agree that the registry was effective, and told the Committee that "there is considerable anecdotal evidence that many lobbyists simply decline to

register." [Aaron Freeman 8:15:45]. However, Democracy Watch provided no evidence to the Committee in support of this contentious assertion, and the fact remains that "anecdote" ? even in its plural form ? cannot be considered "evidence."

Moreover, it is not clear from the anecdotal "evidence" if it is only certain types of lobbyists who fail to register, or all lobbyists across the board; or, for that matter, whether the failure is the result of ignorance of the law or malfeasance. Of course, if the statement was meant to refer to paid lobbyists for non-governmental organizations (NGOs), it might be said to find some support in a study conducted and reported by the Association of Canadian Manufacturers and Exporters (CME). As Jayson Myers explained:

> We believe that most active Consultant Lobbyists, In-House (Corporate) lobbyists, and In-House (Organization) lobbyists representing business are indeed registered in compliance with the act. The same cannot be said however of paid lobbyists representing organizations outside the business sector.... [Jayson Myers 7:9:10]

In support of his assertion, Mr. Myers referred to the results of a study conducted by his organization, which measured registration compliance rates during discussions of three issues in which the CME had been involved over the previous two years: the World Trade Organization; the development of the Export Development Corporation's disclosure standards and requirements; and climate change and the national negotiations on Canada's participation in the Kyoto Protocol. The CME's study found that, of the 36 Consultant Lobbyists representing business associations, 34 were registered; of 14 In-House (Corporate) lobbyists, all 14 were registered; of 28 non-governmental lobbyists involved in the consultations, only three were "properly registered."

The Committee did not itself review the CME's study and therefore cannot assess its conclusions. The reported conclusions though, even if true, do not necessarily indicate malfeasance. In many cases, it may be that the failure results from honest ignorance or confusion. In at least some cases, the problem may stem from limited resources or expertise, or even as a result of being outside the mainstream, isolated from the urban community of lobbyists:

> Now it sometimes occurs maybe when you're going out of the metropolitan areas that perhaps you have people who may not be as familiar as to the obligations under the act. That's why we follow up with these telephone calls, advise them and then that usually will result in a registration. [Diane Champagne-Paul 19:09:30]

This approach, which relies on industry participants to report possible breaches, did not meet with the approval of all witnesses. John Chenier, Editor of the *Lobby Monitor*:

> I refer you to the testimony of the lobbyist Registrar before this Committee.... According to her testimony, those who choose not to register but whose activities, through the vigilance of public servants, are brought to her attention need only profess their ignorance to the Registrar and belatedly submit a registration to escape sanctions. [John Chenier 14:15:40]

Of course, one cannot infer malfeasance from every failure to register, since ignorance of the law might just as likely be the cause; and, in our system of justice, defendants are entitled to the benefit of reasonable doubt. Still, even breaches of the Act made in good faith will, if left unaddressed, erode its effectiveness; the Committee is of the view, however, that ignorance of the law is not best cured by stronger enforcement, but rather through public education. The point was well-expressed by Brian Grainger, a long-time consultant on business ethics:

> The Americans have proven to us that you can litigate the world and still have a mess. We haven't gained anything from going in that direction but on the other hand... transparency, accountability, are important. I'm suggesting, and many people are suggesting today, that we're going to have to depend and rely on...the word integrity.

> the professionalism, of individuals called to serve....Where we rely completely on rule based approaches and not value based approaches...we're going to have a difficult time. [Brian Grainger 8:16:15]

In conclusion, although it appears to be the case that the registration requirements of the Act are, for the most part, being complied with, the Committee is of the view that the question of compliance would benefit from further study and, accordingly:

Recommendation 1:

The Committee recommends that the Government undertake a study to determine rates of compliance under the Act and the reasons for non-compliance where it exists.

(a) The Role of the Ethics Counsellor

The Ethics Counsellor is responsible for investigating possible violations of the Lobbyists Code of Conduct. In this capacity, he reports to the Minister of Industry (and accordingly, to the Committee). It was in this capacity that the Ethics Counsellor appeared to talk about his role of enforcing the Lobbyists Code.

The Ethics Counsellor derives his authority under the LRA from a Governor in Council appointment, made under section 10.1 of the LRA. The section permits the Governor in Council to "designate any person as Ethics Counsellor for the purposes of this Act." The exact instrument that gives the Ethics Counsellor his duties under the LRA is Order in Council (P.C. 1996-266, February 26, 1996):

> His Excellency the Governor General in Council, on the recommendation of the Prime Minister, pursuant to section 10.1 of the *Lobbyists Registration Act*, is pleased hereby to designate Mr. Howard R. Wilson, of Ottawa, Ontario, as the Ethics Counsellor.

In addition to being appointed under the LRA for the purposes of the Act, the Ethics Counsellor also derives his powers to investigate breaches of the Lobbyists Code. The 1995 amendments that created the office of the Ethics Counsellor also gave him, appropriately, the mandate to draft a *Lobbyists Code of Conduct*. The Ethics Counsellor introduced the Code in March 1997.

By contrast, the Ethics Counsellor derives his mandate under the Conflict of Interest Code from section 5 (1) of the Code:

> Under the general direction of the Clerk of the Privy Council, the Ethics Counsellor is charged with the administration of this Code and the application of the conflict of interest compliance measures set out in this Part.

The Ethics Counsellor's appearance before the Committee to talk about his role under the LRA led to some debate concerning the scope of our study. Some members expressed the view that it was proper, on the occasion of the Ethics Counsellor's attendance, to have him answer questions about the Prime Minister. The majority of members were of the view that the Ethics Counsellor's appearance clearly related to the application of the LRA and Lobbyists Code, not the Conflict of Interest Code. The matter appeared to be resolved when the Committee and the Ethics Counsellor agreed that he would devote the first hour of his appearance to answering questions about the Prime Minister .

While the Committee's mandate in the current study derives from the LRA, we did not view ourselves as being strictly confined to matters directly related to it; in fact, there emerged from the evidence a broad range of issues, some very directly related to the Act, and others bearing only a very tenuous connection to it. For example, discussion frequently returned to such issues as the "cooling off period" for former public office holders, or the reform of campaign financing. While the Committee heard

the evidence on these subjects with great interest, we are aware that not all discussions were of direct relevance to our study. More fundamentally, though, this illustrates that the scope of our study was not always clear.

Where this became most evident was in our discussion about the Ethics Counsellor. The Committee is of the view that the investigative powers of the Ethics Counsellor, as well as his appointment for the purposes of the LRA are clearly subjects within the bounds of the study and, indeed, evidence was heard on them. For example, the Committee addressed the question of whether the Ethics Counsellor should be involved in the enforcement of the Lobbyists Code, or whether this task might not be better assigned to another public servant. At the same time, the Committee recognizes that certain aspects of the Ethics Counsellor's relationship fall outside the scope of our study; for example, the Ethics Counsellor's appointment or his conduct of investigations under the Conflict of Interest Code are matters that, while certainly of interest to members of the opposition and to some Canadians, cannot be said to form part of the Committee's mandate.

In retrospect, it appears that the controversy over the scope of the Committee's mandate would not have arisen but for the fact that the Ethics Counsellor holds two jobs, with two very different reporting relationships. In his role as the investigator under the Lobbyists Code he reports to the Minister of Industry (and to the Committee) on violations of it. In his other role as Ethics Counsellor, he advises on possible violations of the Conflict of Interest Code. The confusion is exacerbated by the fact that the Ethics Counsellor's two tasks, while quite different in nature, go under the same title i.e. the Ethics Counsellor. But this is merely a question of title, and that could be easily rectified simply by giving the Ethics Counsellor (or some other public servant) a different title, such as, for example, the Lobbyists Registration Counsellor.

But, while the 1995 amendments gave the Ethics Counsellor a mandate to draft the *Lobbyists Code of Conduct*, does this require his continued involvement as investigator under the Code? There is no clear policy reason for having the Ethics Counsellor do both jobs, and in fact, it appears to contribute to some confusion over his roles and reporting relationships.

At the time the Act was amended, it appears that it was the intention of Parliament that the Ethics Counsellor's powers of investigation, being quite similar to those of a federal court judge, should most appropriately be exercised by a senior civil servant:

> In 1995...the first charge that was given me was to, in effect, develop a code. But it was very much to be a code. I did so after extensive consultation and that is now part of the overall scheme. It was also felt, however, that there should be very strong investigatory powers and those were provided to me... [Howard Wilson 5:17:15]

The Ethics Counsellor, as the person charged with drafting the Lobbyists Code, seemed like the logical person to investigate and report on violations of it. This does not appear to have been done out of administrative necessity, but out of administrative convenience. In retrospect, it is questionable whether giving the power to the Ethics

Counsellor was sound policy. Lobbying is the concern of all Members of Parliament, not merely that of the Prime Minister, his Cabinet and the members of the governing party. Might the Lobbyists' Code not be more appropriately the responsibility of an official who reports to Parliament? Witnesses were virtually unanimous in supporting this idea. The Committee endorses this proposal; however, it is important to emphasize that this recommendation does not foreclose the prerogative of the Prime Minister to appoint an Ethics Counsellor to advise his government. In fact, any party is free to do the same.

Removing the Ethics Counsellor from the enforcement of the LRA would have two benefits: it

would eliminate the confusion arising from the dual reporting relationship; and it would free up the Ethics Counsellor to devote his attentions exclusively to his mandate under the Conflict of Interest Code. Of course, the way the system has evolved, there exists considerable administrative interdependence between the Office of the Registrar and the Office of the Ethics Counsellor. But it is not clear that there is any obvious advantage to this arrangement; and, in fact, as the hearings demonstrated, it may lead to considerable misconception about the Ethics Counsellor's role in the LRA system. This ambiguity could be resolved by the creation of a new office for the investigation of breaches of the Lobbyist's Code.

Accordingly, for the reasons set out above:

Recommendation 2:

The Committee recommends that the Act be amended to create a new office, which shall have the exclusive responsibility of investigating and reporting to Parliament on alleged violations of the *Lobbyists Code of Conduct*.

(b) Problems of Interpretation

Currently, the Act applies to every individual who for payment on behalf of a client undertakes to communicate in an attempt to influence public decision making. As the Ethics Counsellor explains, this has led to enforcement difficulties:

> We thought the operative word was "communicate"...that you were getting paid, that you had a client and that you were speaking to a public office holder about changing a bill, making a regulation. The Department of Justice prosecutors have said that the operative words on this are "an attempt to influence" and the test that they believe has to be applied...is not "communicate" but "communicate in an attempt to influence" [Howard Wilson 5:16:30]

The effect of this different interpretation is considerable. Under the test as normally interpreted, if a person, for payment, communicates with a public office holder to discuss government business (i.e. legislation or awarding contracts) that person is required to register. This was likely the interpretation Parliament intended, given its consistency with the *Criminal Code*. However, the use of the term "in an attempt to influence" gives rise to interpretive problems. As Irving Miller, Senior Counsel, Commercial Law Division, Department of Justice, explained:

> By removing the words "attempt to influence" you would have a much easier time of gathering the evidence to prosecute an offence, that's quite clear, because the communication is something that you could probably establish quite simply. An attempt to influence... requires much more subtle evidence and that's been the problem. [Irving Miller 19:09:15]

Mr. Miller also noted, however, that the solution was not as simple as dropping the troublesome phrase:

> If you... drop those words and just focus on communication then you do throw a very wide net. In the drafting of that provision you may have to make some exceptions that are not already in the Act because not every communication, you know, should be caught. Inquiries after the status of things, for example, may not warrant that and other sorts of examples. So we'd have to look at everything carefully to see what should be excepted from that. [Irving Miller 19:09:15]

The Ethics Counsellor referred to other jurisdictions, such as the United States, where different language is used, such as "communicate with a public office holder with respect to or in regard to" legislation and the awarding of contracts.

Mr. Miller also reported that several options have been, or are being considered by, the department. One option would move the offence to the system of civil regulatory or administrative offences:

> ...Those are options that have been considered and are still...being considered. They entail some other difficulties...if you decriminalized it, you would lower the standard of proof...from "beyond a reasonable doubt" to the "balance of probabilities".... [But] if you left the words "in an attempt to influence", you still would have some difficulty even then in establishing that even on a balance of probability. So you probably wouldn't remove that problem completely, you would maybe help achieve it, but you wouldn't remove it completely. [Irving Miller 19:09:20]

Another alternative would be to adopt an administrative penalty-type mechanism, which has apparently been done in other federal statutes. However, this approach also has its drawbacks:

> If you adopt that sort of a mechanism, you then have to put in place a tribunal to hear appeals from it, because what will happen then is there will be an administrative penalty that will be imposed and then the person will have to be given the right to appeal that if they choose not to plead guilty. That would mean that they would have to go to a tribunal which you would have to establish under the Act and so on. So it becomes a little more involved. Rather than using the court system that we have, you would have an extra requirement to establish a particular tribunal for that purpose. [Irving Miller 19:09:20]

A third option would use the *Contraventions Act*, an existing federal law that provides for an administrative-type penalty and which is administered using existing courts of the provinces, known as contravention courts. Being designated as a "contravention" decriminalizes an offence. The person is given the option of pleading guilty and paying a fine, pleading guilty and making representations or requesting a trial. However, only seven or eight provinces have signed on to the administration of the contraventions courts. Moreover, it is questionable whether the penalty limits under the current Contraventions Act are sufficient to encourage compliance. Based on the evidence presented, the Committee concurs that the enforcement issue appears to be genuine; however, it does not have sufficient information to be able to assess fully the legislative alternatives available. Accordingly:

Recommendation 3:

The Committee recommends that the Registrar of Lobbyists, the Office of the Ethics Counsellor and the Department of Justice undertake further consultations with a view to determining the most appropriate legislative response to the enforcement issues arising from the use of the phrase "in an attempt to influence" in the Act.

(c) Two-Year Limitation on Summary Conviction Proceedings

Under the current Act, anyone who makes a knowingly false or misleading statement in a return is guilty of an offence. The offence may be prosecuted either by way of summary conviction (subject to a fine of up to $25,000 and imprisonment of up to six months) or by way of indictment (subject to a fine of up to $100,000 and imprisonment of up to two years). The two-year limitation applies only when the crown proceeds by way of summary conviction. There is no limitation if the Crown proceeds by way of indictment. The traditional limitation for summary conviction offences (for example, under the *Criminal Code*) is six months; however, the LRA provides a considerably longer two-year period. The Committee is aware of a growing trend towards lengthening limitation periods and increasing penalties available under summary conviction proceedings, with the aim of increasing prosecutors' flexibility; in some cases, the lapsing of the short six-month limitation period on summary proceedings may force prosecutors to proceed either by way of indictment or not at all. Indictment proceedings, however, are traditionally

reserved for more serious offences, since they entitle the accused to a jury trial and preliminary inquiry. As well, because indictable offences carry more serious consequences, it may be more difficult to secure a conviction.

No clear consensus emerged as to the appropriateness of the two-year limitation: some witnesses expressed the view that it was adequate; others felt that if increasing the limitation period would improve compliance and enforcement then it would be justified; still others expressed concern that the two-year period could lapse before a violation is discovered:

> If you look at the wording, it says charges may be laid "not later than two years after the time when the subject-matter of the proceedings arose".... There can be a huge gap between the time something occurs and the time we become aware of it. [Duff Conacher 8:15:50]

The adequacy of the limitation period cannot be evaluated theoretically, but rather must be evaluated having regard to operation of the system in practice. Have there been cases where a prosecution has been abandoned owing to the lapse of the limitation? The Registrar in her evidence did not provide the Committee with any instance of such an occurrence. In practice, then, it is not obviously the case that the two-year limitation period has proven to be inadequate. Theoretically, however, the situation could be different: what would happen if two years passed before the breach came to light? As a first response, of course, the Crown would have the option of proceeding by way of indictment (if the offence was sufficiently serious); but what about minor breaches, for which summary conviction is the only reasonable means of proceeding? How does it come to the Registrar's attention that a person has failed to register? How long does it take for this information to surface? Since a lobbyist only "shows up on the radar" by registering, how does the Registrar determine whether a lobbyist is actually registered? The Registrar responds:

> ...The registry...is completely... in the public domain and it's accessible by all Canadians, or anybody for that matter.... Anybody who gets wind that maybe somebody is lobbying on an issue, they can go to that registry and see if this individual is appropriately registered....[Diane Champagne-Paul 5:17:10]

The Registrar explains that unregistered lobbying rarely occurs, for the simple reason that the practice is usually an open one:

> Whenever there's lobbying happening on one side, be reassured that there's lobbying that'll be counterbalancing on the various sides or facets of the issue. [Diane Champagne-Paul 19:09:25]

The system therefore relies on industry participants to report, a process which is facilitated by the open availability of the registry on the Internet:

> ...As Registrar, every now and then I will get calls, be they from bureaucrats or even private sector members, who will ask about a specific case. They will ask, "Well, is this individual registered or not registered?" We do the search, and they will probably give us the facts. On the basis of that information, I'll make a query. I'll pick up the phone and I'll call the individual. I'll ascertain what the facts are, and then two outcomes will come out of that. Either the activities in question are not registrable under the Act or they were not aware. Then we make them aware. We provide them with a package and information, and that will result in a registration. [Diane Champagne-Paul 5:17:10]
>
> ...Because of the accessibility of the Registry, if somebody goes to it, there's an issue and they know it's very high profile, they will go to the registry. They see somebody's not registered. They know that this individual has been involved. There will either be a newspaper article, the media will pick up on it. We get a telephone call... [Diane Champagne-Paul 19:09:25]

In some cases, the Registrar reports, her investigation reveals that the activity reported is not a registrable activity; as such, the reported "breach" is not a breach at all:

> First of all, I have to determine whether this is actually within the scope of the act. Now, because a lot of times some people will think that perhaps that an activity really is a lobbying activity when in fact it is not. So I will follow up. I will make a phone call. I will determine and I will try a phone call to the individual in question or other individuals who are relevant to the issue and determine what are the facts. From then, I can determine whether it is within the scope or not. [Diane Champagne-Paul 19:09:25]

Where the reported activities fall within the scope of the Act:

> ...The individuals are informed and advised that there is this registration requirement under the act. Now on the whole, in the metropolitan areas, we have experienced... very good, excellent compliance with the Act. People do register. [Diane Champagne-Paul 19:09:25]

The Ethics Counsellor was of the view that the registry system has cleared up much of the mystery which used to surround the system:

> ...A couple of years ago when Onex made its bid for Air Canada there was intense interest on exactly who was hiring which lobbyists. Air Canada was hiring lobbyists, Canadian was hiring.... There was no doubt several others.... My office received exactly two telephone calls...because everything was available on the Internet. Now I think that changes the mystery of the debate. There was no mystery about who was being hired to make representations on behalf of which corporate interest. [Howard Wilson 5:16:40]

The Canadian Bar Association, in its written brief to the Committee, expressed its view:

> ...Violations sufficient to warrant proceedings by way of indictment are properly subject to prosecution even later than two years after the offence. Violations which do not justify such prosecution, however, are in all likelihood not serious enough to warrant investigation and prosecution after two years have gone by. [CBA Brief].

Owing to the openness created by the registry, it appears that for the most part the likelihood is that the Registrar will learn of possible breaches of the Act in a timely fashion, and it does not appear that the two-year limitation has adversely affected the ability of the Crown to proceed with commencing summary conviction proceedings. Accordingly, for this and other reasons set out above:

Recommendation 4:

The Committee is of the view that the current two-year limitation period for the commencement of summary conviction proceedings under the Act is adequate and therefore does not recommend any change to the Act in this regard.

▶ Next

CHAPTER 2
THE LOBBYISTS REGISTRY - REGISTERING AND UPDATING

The Committee considered several matters in relation to the filing requirements of the LRA.

1. An "Organization" Approach to "Corporate" Lobbyists

The Act distinguishes between "organizations" e.g. chambers of commerce, associations and trade unions, etc., and "corporations." The different entities have different registration requirements. Currently, the senior officer of an organization must register as an In-House (Organization) lobbyist if the sum total of lobbying time for all employees is equal to 20% of one employee (i.e. one day per work week). The senior officer must list all employees engaged in lobby activity, no matter how much time they spend lobbying. The current filing requirement for In-House (Corporate) lobbyists specifies that every individual must register who devotes a "significant part" of their duties (defined as 20% of their time) to lobbying.

The Committee was asked to study the advisability of applying the "organization" standard to "corporation" lobbyists. Jayson Myers of the CME expressed the views of that association:

> Should corporations be required to register in a similar manner as In-House (Organization) lobbyists? Well, some companies may benefit from this, simply being able to list employees engaged in lobbying activities, but for others, particularly large companies that employ a number of individuals who may be engaged in lobbying activities, this requirement would impose tremendous administrative costs without any improvement in transparency. [Jayson Myers 07:09:20]

CME's recommendation was that, if a change was being considered, then the requirement to register in a similar way to In-House (Organization) lobbyists should be optional.

Concerns were also expressed by Ms. Gervais of Bell Canada:

> The possibility that the In-House (Organization) standard might be extended to cover In-House (Corporate) lobbyists does concern us. Simply put, we are concerned that the change will increase the administrative burden on customers with no discernible benefit to the public. [Linda Gervais 15:09:10]

John Chenier, Editor of the *Lobby Monitor*, also opposed the change:

> Establishing the same reporting rules as organizational lobbyists for corporations would be a mistake. Organizations, typically associations, are smaller, more centralized and aware of who is charged with government relations responsibilities. Corporations, on the other hand, are larger, more geographically dispersed, more heterogeneous and do not have reporting relationships and structures in place to ensure that all lobbying activity could, or would be, funnelled through a single channel. [John Chenier 14:15:40]

Notably, not a single witness appearing before the Committee endorsed the idea of applying the In-House (Organization) approach to In-House (Corporate) lobbyists. Accordingly:

Recommendation 5:

Owing to the lack of support for the proposition among witnesses appearing before it, the Committee does not recommend that the Act be amended to apply an In-House (Organization) registration approach to In-House (Corporate) lobbyists.

2. "Qualitative" Registration

Should the registration requirement be changed to encompass employees whose lobbying activity may be less than 20% of time worked, but whose lobbying efforts may have an important impact on the goals and objectives of the corporation? Witnesses raised compelling objections to this suggestion:

> ...One of the important safeguards of the rights of individual Canadians to communicate with public officials is the definition of a lobbyist as an individual paid to influence public policy on behalf of an employer, or a client. Changing the definition of a corporate lobbyist along the lines suggested would create significant interpretive problems. First of all, it would make it difficult for individuals to represent their legitimate interests before government, or more difficult and, in the end, probably wouldn't lead to any big improvement in the transparency of the way the Act operates. [Jayson Myers 7:09:15]

The Committee is mindful of the interpretive problems such a change would raise: for example, how would the "importance" of the lobbying campaign be assessed? Who would decide whether the objective of a particular lobbying effort is "important"? Might it not be argued that all lobbying efforts are important, otherwise why would the company undertake them? It is not even clear that guidelines could be drafted to assist in determining what is, and what is not, "important" to the client. How would the standard be enforced? Would the Registrar be required to order production of the client's confidential memoranda or other business documents in order to determine the importance or impact

of a given lobbying effort? Could the registrant be prosecuted for concluding, mistakenly but in good faith, that the effort wasn't sufficiently "important" to declare?

Given the Committee's concerns about the uncertainty inherent in such an approach, we are of the view that it would not be feasible to amend the Act in order to require lobbyists to indicate the relative importance of a given lobbying campaign (a "qualitative" approach) and, accordingly:

Recommendation 6:

Owing to the considerable conceptual difficulties presented by the proposal, the Committee does not recommend that the Act be amended to create a so-called "qualitative" approach to registering lobbying activities.

3. Closing Loopholes

Several witnesses recommended the closure of what they considered a significant "loophole" in the Act. Section 4(2)(c) states that the Act does not apply to "any oral or written communication made to a public office holder...in direct response to a written request from a public office holder, for advice or comment..."

It is not clear why this exemption exists from the general requirements of the Act, and the Committee noted with concern the potential exploitation of the section to circumvent the Act. As explained by Democracy Watch:

> If you receive a written request to come and meet with an official, you do not have to register.... Everyone receives a confirmation of any meeting they go to and that's all you need and you don't have to register.... Many people could use it to escape registration very easily just by saying, "oh, yes, I'm calling you and we're going to have a meeting. Send me written confirmation." Written confirmation sent. You don't have to register any more that you're lobbying. [Democracy Watch 8:16:35]

The Committee heard similar views from other witnesses:

> The current system, under which paid lobbyists are required to register their lobbying efforts with federal government departments and agencies, should be improved. For instance, lobbyists should be required to register even if they receive a written request by a public official to lobby. Currently this requirement is waived by subsection 4(2) of the act. [Suzette Montreuil 14:15:45]

The Committee heard no justification for the "loophole" which appears to be created by section 4 (2)(*c*), which permits a lobbyist to not register when the lobbying contact is initiated by the public office holder. Accordingly, in the absence of any apparent public policy reason for its continuance:

Recommendation 7:

The Committee recommends that section 4(2)(c) of the Act be deleted in order to require lobbyists to register even when the lobbying contact was initiated by the public office holder.

4. Anti-Avoidance

One witness also suggested that enforcement of the Act could be improved by the inclusion of a general anti-avoidance provision. As explained by John Chenier:

> Lobbying and ethics rules should include a general anti-avoidance provision to prevent people from exploiting any loopholes. This would be in keeping with the statement contained in the Lobbyists Code of Conduct that lobbyists should conform to not only the letter but also the spirit of the Code. It would also be in keeping with similar provisions in the *Income Tax Act*. [John Chenier 14:15:50]

The Committee agrees that compliance with the letter of the Act may not fulfill the spirit of the Act. For example, a firm of Consultant Lobbyists or a corporation employing a roster of lobbyists could avoid registering by strategically allocating the "actual" lobbying work (i.e. communicating with public office holders) among several lobbyists to ensure that no individual lobbyist reaches the 20% threshold. An anti-avoidance provision would permit a court to determine whether the allocation of work was done for a *bona fide* business purpose or simply to circumvent the Act. In the latter case, the Court could order registration.

The ultimate aim of the Lobbyists Registration Act is to ensure openness and integrity in relations between the government and private sector lobbyists. Maintaining public confidence in the system requires the utmost good faith from registrants. The Committee heard evidence that the lobbying community, generally speaking, treats the Act with considerable gravity and, in fact, tends to register out of an abundance of caution even where the activity, on a strict interpretation of the Act, may not be registrable.

The Committee is aware that the Lobbyists Code of Conduct requires that "lobbyists should conform fully with not only the letter but the spirit of the Lobbyists Code of Conduct as well as all the relevant laws"; moreover, the evidence supports a conclusion that lobbyists are, to a very high degree,

complying in good faith with both the registration requirements and the Lobbyists Code. Still, the Committee is of the view that the Lobbyists Registration Act demands more than mere compliance with the letter of the law. Taken together, the Act and Lobbyists Code demand the highest degree of good faith from those subject to it. For these reasons:

Recommendation 8:

The Committee is of the view that the Lobbyists Registration Act is an act of great public importance, and, as such, it demands of registrants the utmost good faith in complying with the spirit of the law, even where doing so may require more than mere compliance with the letter of the law. The Committee recommends that this fundamental principle be emphasized by the inclusion in the Act of a general anti-avoidance provision.

5. Updating filings

> We sometimes have found that people have neglected through innocence to remove their registrations and we could do this electronically on a six-month basis or on a yearly basis; an area to look at. [Howard Wilson 5:16:30]
>
> ...If you don't sort of tell them to do it, some people seem to get slack about it. [Scott Proudfoot 15:10:40]

Currently, Consultant Lobbyists are obliged to register within 10 days of beginning a piece of registrable work and deregister within 30 days of completing the assignment. The 30-day requirement is set out in section 5(4) of the Act and applies only to Consultant Lobbyists, presumably because they are more likely to represent clients for individual projects of a definite duration. In-House (Organization) and (Corporate) lobbyists are not subject to the 30-day deregistration requirement, although the policy reason for this is not immediately clear. While it may be the case that these latter lobbyists' undertakings are more likely to be indefinite in duration, it cannot be said that this is necessarily the case. Accordingly:

Recommendation 9:

For the purposes of simplifying the current deregistration requirements and promoting greater consistency of application of the Act, the Committee recommends that the same deregistration requirements should apply to all lobbyists.

In spite of the 30-day requirement, it appears that deregistration is not always accomplished in a timely fashion:

> I've noticed when I've gone through the register from time to time, which is something I do, that in the past some people who have been hired a number of years before continue to list Bell as a client, even though that relationship has been terminated for some time. [Linda Gervais 15:09:15]

But why does this happen? A witness explains:

> ...We do try and deregister as promptly as we can, but the fact of the matter is in the rush of events sometimes you don't. There are also those odd instances where a client has a rush of activities, we'll drop off for a while and then we'll come back, and frankly administratively it's a lot simpler just to stay on the books. So that's one of the reasons why it happens. [Tony Stikeman 12:10:00]

Witnesses generally agreed that keeping registry information up to date it is difficult to accomplish

within the short time span of 30 days and, as a result, is sometimes neglected. There was no suggestion, however, that this was the result of any shortcoming in the legislation, but rather simply an administrative issue. Witnesses agreed that the best way to address this issue was to have the Registrar provide a reminder to registrants to update their information in the registry. The Registrar agreed that this could be done and would likely achieve the desired result. Accordingly:

Recommendation 10:

The Committee recommends that, in order to ensure that registrants update their filings in a timely fashion, the Registrar of Lobbyists provide an E-mail "update reminder" to all registrants at least 30 days in advance of the date upon which their registrations must be updated.

However, this still does not address the question of how often filings should be updated. Currently, In-House (Corporate) lobbyists have to update their registrations once a year; In-House (Organization) lobbyists must update their filings every six months. One witness described this as "an unnecessary administrative task":

> So little changes in the course of six months that the public interest is hardly served by such additional transparency. Our...recommendation would be that all three types of lobbyists be required to update their registrations once a year. [Tony Stikeman 12:09:15]

While this suggestion found wide support among witnesses, one member expressed the Committee's concern that, by moving to an annual filing requirement, lobbyists might, in good faith, remain on the registry for up to a year, thereby creating the misleading impression that they represent a client long after the undertaking has ended. In fact, a lobbyist could be representing a client with totally opposite interests. John Scott responded to this concern:

> I would hope that anyone who would be phoning your office would indicate what the reason is for the meeting and what the issue might be, so that it would make it easier for you rather than checking in on the registry. [John Scott 12:09:55]

While the Committee concurs that a lobbyist approaching a Member of Parliament would be quite likely to identify his client (and, in fact, the lobbyist is required to do so by the Lobbyists Code of Conduct), that is not really the issue: Members are not concerned so much about who the lobbyist is currently representing, but rather about who the lobbyist is no longer representing, and this is not the sort of information that a lobbyist would be likely to reveal in the course of making representations to a Member of Parliament or other public office holder. Confusion could arise when the public office holder, in order to be better informed, consults the registry to learn more about lobbyists and their clients. It would, of course, be very reasonable to assume that the lobbyist represents the clients listed in the registry; in fact, it would suggest that exact conclusion.

Still, while tardiness in deregistering could lead to confusion, it is not immediately clear whether any genuine harm would result to the public interest. It might equally be argued that there is considerable advantage for the public office holder in having a list of the clients whom the lobbyist has represented over the preceding year, and the issues that the lobbyist has addressed.

Moreover, there are at least two fairly simple alternatives available to address the possibility of confusion arising from clients' identities being left on the registry after the completion of an undertaking or termination of a client relationship: the first option would be simply to leave it to the public office holder to ask the lobbyist if he is still representing all the clients he has listed on the registry. Greater certainty

could also be achieved by having an appropriately-worded disclaimer set out clearly on the registry Web site stating that some client listings may no longer be active and, accordingly, persons are encouraged to ask the individual lobbyists who they are, and who they are no longer, representing.

After the close of Committee hearings, Government Relations Institute of Canada (GRIC) submitted to the Clerk of the Committee a supplementary brief that suggested an alternative method of addressing enforcement of the 30-day deregistration period in section 5(4):

> The current requirement causing Consultant Lobbyists to de-register after 30 days of completing an undertaking could be removed from the Act and inserted into the Lobbyists Code of Conduct as a guideline or best practice.

This change is said to reflect the business practices of Consultant Lobbyists, entering into, withdrawing from, and then re-entering client relationships. Removing the strict 30-day requirement would permit lobbyists a little time to determine with certainty whether the undertaking has, in fact, ended. GRIC emphasized the point that the Lobbyists Code of Conduct requires lobbyists to disclose the identity of the person or organization on whose behalf the representation is made, as well as the reasons for the approach. "In other words," GRIC concludes: "Parliamentarians and government officials would be no less knowledgeable about the nature of the lobbyists' activities."

Recommendation 11:

In order to ensure that information in the lobbyists registry is kept up to date, the Committee recommends that all lobbyists should be required to update their filings semi-annually; however, the 30-day deregistration requirement currently set out in section 5(4) of the Act should be removed from the Act to the Lobbyists Code in order to remove it from the sanctions prescribed by the Act for failing to deregister within the 30-day time frame currently prescribed.

The Committee is mindful, however, that this will likely result in registrations being left on the registry for up to six months. For that reason:

Recommendation 12:

The Committee also recommends that the Registrar draft a notice, to be displayed clearly on the lobbyists registry Web site, to the effect that because lobbyists are required to update their filings semi-annually, certain client relationships may no longer be active; and accordingly, persons are encouraged to verify with the lobbyist which of the lobbyists' current client listings remain active.

Recommendation 13:

For greater certainty, the Committee recommends that the 30-day period should be removed from the Act *only* insofar as it applies to the obligation to deregister. Because timely updating of client information is important, the Committee recommends that provisions that require the lobbyist to provide notification within 30 days of any changes to existing filings should remain in the Act.

6. Penalties

The Act prescribes two penalties: under section 14(1), a person who breaches any provision of the Act is liable on summary conviction for a fine of up to $25,000. This section could apply even where

the failure to comply was the result of honest inadvertence. Section 14(2) deals with a false or misleading statement knowingly made by an individual. Under this section, the Crown may proceed either by way of summary conviction (subject to the two-year limitation) or indictment (in which case no limitation applies). Summary proceedings may lead to terms of imprisonment of up to six months and a fine of up to $25,000. A conviction by indictment may lead to a period of incarceration of up to two years and a fine of up to $100,000.

Some witnesses expressed concern over the fact that the penalties under section 14 apply equally to the failure to register and the failure to deregister:

> We have a practical concern about that, in that the sanction that applies with respect to failure to deregister is the same as failure to register or misrepresenting facts. In reality the failure to deregister is not causing the public interest any harm at all.... [John Scott 12: 09:20]

For reasons set out above, the Committee agrees in principle that the failure to deregister in a timely fashion is unlikely to have consequences as serious as the failure to register. However, it is questionable whether section 14 is really in need of amendment. That section prescribes the maximum penalties that may be levied, not the minimum. Moreover, the failure to comply with the Act does not automatically lead to charges being laid: the Crown may choose not to proceed with charges if circumstances warrant. And, even where the Crown secures a conviction, the Court will have broad discretion to determine the appropriate penalty within the limits prescribed by section 14 having regard to all the circumstances of the case. If, for example, the failure is the result of honest inadvertence, then it may be dealt with quite simply by a phone call or E-mail reminder from the Registrar, without even requiring the involvement of law enforcement authorities or the judiciary. Or if charges are laid, the Crown may seek ? or the Court may hand down ? a very light penalty, proportionate to the nature of the offence.

The seriousness of a given breach of the Act is not something that can be determined in the abstract; rather, it must be addressed on a case-by-case basis, a task to which Canadian courts are imminently suited. Prescribing different penalties for offences that might be, in practice, quite similar would be more likely to exacerbate rather than mitigate uncertainty in the application of the penalty provisions. It is certainly foreseeable that an attempt to define penalties too rigidly could "tie the hands" of prosecutors and the judiciary. For these reasons:

Recommendation 14:

The Committee is satisfied that the current penalty regime prescribed by the Act is appropriate and does not recommend any changes in this regard.

Next

CHAPTER 3
DISCLOSURE AND TRANSPARENCY

Most witnesses expressed the view that the current disclosure requirements of the Act are sufficient and represent a good balancing of the fundamental principles. A significant number, however, did suggest that the system could benefit from increased disclosure. However, there was little consensus as to exactly what that disclosure should include.

Interestingly, all three types of lobbyists seemed to feel that their own disclosure rules were sufficient, but should be broadened for other groups. In-house (Organization) lobbyists, represented primarily by Democracy Watch, suggested that transparency would be improved with greater disclosure from Consultant and In-House (Corporate) lobbyists. Consultant and In-House (Corporate) lobbyists, for their part, suggested that what was required was greater disclosure from In-House (Organization) lobbyists:

> These people should be registered. You should know where their money comes from. You should know whether they are funded by government and in any way and by how much. The fact that some of them don't register on the pretext that there's no formal salary structure and they don't get a salary, that they're volunteers, I think is very dangerous. It's a loophole which would permit those of independent means to avoid obligations imposed on taxpayers who work for fees or a regular paycheque. [Peter Clark 15:10:00]

The Committee is mindful of the principle that only that information which is material to the objective of the Act, that is to say, information required to maintain effective transparency with respect to activities of paid lobbyists, should be disclosed. Requiring more information because it "might" tell us something runs the risk of overburdening the system by imposing onerous disclosure requirements for information having little real relevance or value in assessing the scope or nature of lobbyists' activities. The Committee is also mindful of the need to protect the confidentiality of commercially sensitive or personal information that is not material to the issue of transparency.

The Ethics Counsellor expressed his view that the information currently required is sufficient:

> ...We've struck a pretty good balance in terms of the information. We get very few complaints that the information on the registry is not sufficient to determine who has been hired and what is the purpose of their representations. I find as a practical matter that there's often an attitude that if some information is useful, then more information is better. I do believe the Committee should be very conscious of any proposition that comes to the table about vastly expanding the amount of
>
> information required, and use the test of the preamble. A case may be made for more information, but my view is that in 1995 the committee did a very good job of restructuring this Act dramatically. That's not to say there's not a case to be made for honing the act, but I don't think we're at the point where we need to contemplate major restructuring. [Howard Wilson 5:16:55]

1. Dual Reporting System

> ...An enormous burden on our public service, which is already anorexic. [Sean Moore 14:16:05]

> ...In terms of logs, I sift through information all the time, and too much is just the same problem as too little. [John Chenier 14:16:00]

A proposal that received considerable debate was the possibility of creating a dual reporting system that would require, in addition to the existing registration requirement, that persons inside government report their contacts with lobbyists. The idea is not a new one:

> This was debated the last time and it had two aspects to it. One was whether or not public-office holders should be required to say to a lobbyist, are you a lobbyist, have you registered? It was felt that... it was an obligation on the part of the lobbyist to do this rather than having public-office holders act as a point of enforcement. [Howard Wilson 5:17:10]

As an alternative, several witnesses supported the concept of a limited dual-disclosure system, one that would require that only certain more senior civil servants be required to report lobbying contacts:

> The disclosure...should be tied to decision-making power of the civil servant. So you have to draw a line somewhere and we believe that it's possible to draw a line and you don't have to go down right to the frontline person because that frontline person will be reporting to someone who has decision-making powers. [Duff Conacher 8:16:25]

This approach presents practical difficulties, the most obvious being where do we draw the line? In reality, decisions are more often made institutionally than individually:

> If you do target officials who are approached in an effort to influence policies, those in question are rarely senior officials. You need to realize how government works. There are people, often professionals, who put information together and assess the status of the situation. [Pierre Morin 15:09:55]

As well, many witnesses expressed the view that the effect of such a system would be significantly higher compliance costs without necessarily creating any corresponding improvement in transparency:

> We think a requirement such as this would again impose a pretty onerous burden on government officials. It would also be highly impractical, given the nature of Canada's parliamentary system. If the intent of this is to strengthen compliance with the Act, then we believe a requirement on the part of the public servants to ensure that lobbyists are registered in order for a meeting, or any other form of communication, to take place, would be more effective than establishing a dual disclosure system. [Jayson Myers 7:09:15]

While arguments were made both in favour of and against the proposition, the Committee is of the view that creation of a double disclosure system would not be justified. The system would certainly be considerably more costly than at present. Currently, a lobbyist is required to indicate what department he is speaking with and the subject matter of the discussion. Critics assert that this is not enough information, that it does not permit the public to form a true impression of precisely what is going on, of what information is being exchanged, of the policy positions that are being advanced. But this ignores the many other sources from which information is available, including for example Internet Web sites or access to information requests. Hillwatch.com used the example of the GMO food debate to illustrate how the Internet can potentially open the public policy debate:

> The theory behind this is that if you really want to know who's saying what on the issues you're debating, and what issues are being debated inside governments and so on, you really can go to the Internet to find out. If you put them together in an organized fashion and in a meaningful fashion, think of what it gives the public. Think of what it gives you in terms of making your job more meaningful. If you wanted to find

> out what's going on with GMO foods, you could find all the representations that have been made on GMO foods over the last years, and all the converging and the diverging points of view. [Michael Taeter 15:10:10]

Scott Proudfoot explained how the Internet has forced many organizations to make their policy views public:

> The anti-GMO food activists use the Internet to attack the mainstream corporations. The mainstream corporations, which didn't know what hit them, frankly, all of a sudden found they had to really respond in public and defend their position. If you go to their corporate sites now, or if you go to their association sites, there's a lot of good, reliable information, there's a lot of self-interested information, there's a lot of scientific evidence, and there's a lot of fear-mongering. There's a whole potpourri of information that you can find on the issue. Four or five years ago, you wouldn't have seen any of this information. Now it's all largely publicly accessible. Basically, beyond the Lobbyists Registration Act, we think the Internet is really pushing the whole industry to be a heck of a lot more public and transparent where people can find it. [Scott Proudfoot 15:10:15]

As well, considerable information can often be had from government departments for the asking:

> If I were going to be making a presentation for the Department of Finance, then everyone is aware of that. The media can pick up the phone and contact the department and say, "Mr. Scott is contacting you on a particular issue. May we have some more details?" There are access to information criteria that then kick in, in terms of what should or should not be disclosed depending on what the issue is. The same with Members of Parliament, the same with committees. If...someone from the Department of Finance was appearing here, you could say...: "I understand Mr. Scott contacted your department and can you enlighten us more in terms of what the issues are?" [John Scott 12:09:35]

Another potential source of information, which was alluded to but not explored in detail, is the *Access to Information Act*. For example, a request might be made for all correspondence directed to a department on a particular bill or contract, a list of meetings that were held and with whom, etc. A great deal of information about meetings involving departmental officials might be available by access to information requests, although these requests are generally determined on a case-by-case basis.

The best argument in favour of a dual-registering system is that, theoretically, comparing the information between the two sources would reveal unregistered lobbying contacts. The Committee heard evidence both for and against such a system. The main argument against is that it would increase enormously the amount of information in the registry. This might be justified were it to lead to greater transparency. But determining this question depends on what such a system would reveal: certainly, it would reveal any discrepancies between reports coming from inside and outside the bureaucracy. Some portion of those discrepancies might be deliberate, done with the intent of avoiding detection; however, such discrepancies might just as easily ? and perhaps more commonly ? result from innocent misinterpretation of the rules.

On balance, the Committee is of the view that the creation of a dual disclosure system would be unlikely to result in real benefit to the public or the industry in terms of increased transparency; at the same time, requiring disclosure of the name of each person (or even only of persons with "decision-making power") contacted would certainly greatly increase the compliance burden and the strain on the registry resources. Moreover, who can say with any certainty where "decision-making power" resides in government? Small procurement contracts, for example, may be awarded without being reviewed "up the ladder" by a senior decision-maker. Determining the "cut-off" would be difficult, perhaps impossible in the complex web of modern government where a single decision may involve many officials or committees working at different levels of the bureaucracy. For all these reasons:

Recommendation 15:

The Committee is of the view that the creation of a dual-disclosure i.e. a system that would require public office holders to report having been contacted by a lobbyist, would result in significantly increased compliance cost with little, if any, improvement in transparency; for that reason, the Committee does not recommend that the Act be amended to create a dual-disclosure system.

2. Identifying Individual Contacts

Another proposal that was discussed would require lobbyists to indicate not only the department, but also the names of the individuals with whom they spoke. The Ethics Counsellor responded:

> This is a proposal that, in all fairness, troubles me.... I'm a strong believer that public servants in this country should be as open as possible to Canadians who want to go and talk to them about their responsibility. Some of these will be lobbyists, who are then required to register, and others will be just average citizens. I think it very important that public servants, in carrying out their responsibilities, be open to consultation, and so on. I think if all senior public servants were required to register just exactly who they were talking to, it would have an unintended consequence, which is that there would be fewer conversations than I think are probably desirable. That's a fear, and I think the committee will want to debate that. [Howard Wilson 5:17:00]

The possible perverse effect of "naming names" was echoed by Linda Gervais:

> I believe that if we had to reveal the names of the people receiving our calls, they might not be so open and might hesitate to call us back because they would have certain concerns. We want an open process. I think the results of such a thing would be the opposite of what we are looking for. I think it would be an incentive for some people to not call us back, to not provide us with information and to not be open...It is human nature. [Linda Gervais 15:09:25]

GRIC made the point that focussing the attention on individuals within the bureaucracy misses the point of what the Act aims at:

> ...Let's deal with what the lobbyists are all about, let's not focus on what the individual public servants are doing in terms of various levels of activity on the file. ...The issue isn't one of cost but the issue is one of let's deal with the situation and the project and the file that is engaging our clients [Tony Stikeman 12:09:35]

These sentiments were supported by John Scott:

> ...Getting into filing every single name of every single person that we might meet with in government, administratively is a problem and I think it is adequately covered under the current situation. [John Scott 12:09:35]

There appears to exist among the public an impression that the goal of lobbying is to aim high and, ultimately, to get that elusive "meeting with the Minister." But this appears to be too simple a picture. What is perhaps more important to a lobbyist is to get the attention of the people who advise the Minister, even down to the individual policy analyst who prepares internal memoranda for purposes of policy discussion. But this raises the concern of what would happen if a trusted policy advisor should be misled by a convincing lobbyist? The Minister (or any other policy or law-maker) might not get all the information needed to make good decisions. But this view certainly fails to give due credit to the judgment and intelligence of departmental policy advisors. The Ethics Counsellor responded to this concern by drawing on his own experience as a public servant:

> I've spent all of my career in the public service. I spent most of it in the foreign service and in trade policy. I was certainly lobbied continuously. I felt that was actually part of my responsibilities. I found it very dangerous to take merely one point of view in terms of trying to put advice forward to my Minister. I tried to keep things as open as possible so that I could speak to as many people as possible in order that the advice I gave to Ministers, which ultimately was the decision, was the best possible advice. So I found it essential to keep those lines open. [Howard Wilson 5:17:00]

Witnesses were mixed in their views. Brian Grainger expressed the debate succinctly:

> I honestly don't know if it's in the public interest to know that sort of thing... Whether or not you need to know the name of some frontline supervisor in...who got lobbied — I don't see the need, personally....What may be at issue here...is do we need the information? The lobbyist is already required, company, corporate, In-House, whatever, to give you some information about what he or she is doing. I think there's enough public policy information there around this issue. ...[Brian Grainger 8:16:25]

The Committee is of the view that requiring the disclosure in the lobbyists registry of individual names would not provide any significant improvement in transparency, and could, in fact, impede free communications between public office holders and lobbyists; at the same time, it would considerably increase compliance and enforcement costs. Accordingly:

Recommendation 16:

The Committee does not recommend that the Act be amended in order to create a requirement that the names of individuals who have been lobbied be disclosed in the lobbyists registry.

3. Organizational Disclosure

As indicated above, a number of witnesses expressed the view that the accountability of In-House (Organization) lobbyists would be enhanced by the disclosure of more information pertaining to their governance structure and sources of funding. The Canadian Manufacturers and Exporters (CME), for example, recommended that organizations be required to disclose the legal status of the organization, its ownership and or governance structure, the purpose of any federal funding, and the source and purpose of any foreign funding, and that they be required to ensure that the names of all employees engaged in lobbying activities be registered under the Act, and that the lobbyists registration database allow for a search of organizations based on the names of employees.

For the same reasons that the Committee is satisfied that that current disclosure requirements are sufficient to ensure the purpose of the Act is achieved, it is also of the view that greater disclosure on the part of In-House (Organization) lobbyists is not warranted. As such,

Recommendation 17:

The Committee is satisfied that the current disclosure requirements for In-House (Organization) lobbyists is sufficient and, for that reason, does not recommend any changes to the current disclosure requirements in this respect.

4. Spending Disclosure

It is a widely-held misconception that lobbyists achieve results simply by spending money; and the more they spend, the better their results. For that reason, some witnesses suggested that lobbyists

should be required to disclose how much they and their clients are spending on a particular lobbying campaign.

However, most witnesses agreed that the characterization of lobbyists "spreading money around the Hill" is far too simple a characterization of what lobbyists really do. One need only recall the thwarted merger plans of the major banks to understand that spending a lot of money on lobbying activities is no guarantee of achieving results. At the same time, it is quite possible to mount a successful lobbying campaign on a shoestring budget, particularly in the age of the Internet.

Several questions must be addressed when discussing spending disclosure: First, would it genuinely increase transparency in the system? And second, what would it cost to comply? What would it cost to administer? And how would it impact on business confidentiality?

All witnesses agreed that lobbyists spend money in different ways depending on the nature of the assignment:

> ...In Canada the services of lawyers, lobbyists and consultants vary from firm to firm and from individual to individual. Some chiefly provide representational services; others place emphasis on providing their clients with information only. Still others offer a full-service continuum, in terms of monitoring, analysis and a number of other things that ranges from a complete continuum of activity, only a small portion of which is lobbying: actually making contact with public officials. [John Scott 12:09:20]

Representatives of Democracy Watch explained how organizations such as Democracy Watch spend their funds:

> ... It would include the staff time, preparing materials, research reports, things like that. [Duff Conacher 8:16:35]

While most witnesses did not support the concept of spending disclosure, the Committee is of the view that a mere "show of hands" should not determine its response to this important issue. More fundamentally, the Committee foresees difficulty with the concept of disclosing spending for the simple reason that the very act of attempting to quantify lobbying expenditures is a process fraught with uncertainty, as likely to mislead as to inform. How would that figure be arrived at? Would it include, for example, a pro rata portion of the administrative costs of the firm, such as secretarial assistance or even photocopying? Sean Moore discussed the U.S. experience with spending disclosure:

> ...It got very silly very quickly because you had industry associations that had to calculate what percentage of their light and heat and parking was attributable to lobbying activity. The numbers very quickly became meaningless. [Sean Moore 14:17:00]

Simply disclosing a monetary figure without providing any details of how that figure was arrived at would be unlikely to provide meaningful disclosure. Moreover, the costs of administering and complying with the system would certainly increase.

Still, this is not to say that the proposal is without some merit. For example, guidelines could be developed to indicate what lobbying expenses must be disclosed. As such:

Recommendation 18:

Although the evidence presented to the Committee was mixed, it is possible that requiring lobbyists to disclose the amounts that they spend on lobbying campaigns could lead to greater transparency. For that reason, the Committee recommends that

the proposal be made the subject of further study by the Department in consultation with stakeholders.

5. Fee Disclosure

In addition to disclosing the money spent on lobbying campaigns, some witnesses suggested that lobbyists should be required to disclose their fees. Consultant and In-House (Corporate) lobbyists expressed concern about this proposal:

> GPC sees no public benefit associated with the disclosure of fees and is strongly opposed to any suggestions that consultants and lobbyists should be obliged to disclose fees. Those who would promote the merits of this suggestion sometimes refer to disclosure requirements in the United States as a meaningful precedent. However, based on discussions with our American colleagues and a review of how disclosure works in practice in the United States, we believe that fee disclosure does not add transparency to their system. [John Scott 12:09:20]

Some members of the Committee felt that it might be useful to have fee disclosure. What was lacking in the debate, however, was a definitive statement of how, exactly, that information would be useful. The Committee is of the view that, before making such a major departure from the Act as originally passed by Parliament, the case for fee disclosure would have to be made more convincingly than was the case in these hearings.

Moreover, requiring fee disclosure could have rather serious implications for the billing practices of some lobby firms. Sean Moore explains:

> My own experience — and I know I'm ridiculed by my colleagues in the government relations business when I say — that the main objection to fee disclosure in the government relations business is that a lot of them don't want to know how little they charge certain clients. That to get clients in the door they may only charge $2,000 or $3,000 a month, but they're charging someone else $9,000 a month for essentially the same thing. That's a powerful incentive not to have a financial disclosure, but for the exact opposite reasons than you'd think. [Sean Moore 14:17:00]

The Committee is aware that the public policy and government relations consulting industry operates in a very competitive market, much like any other service industry in Canada today. Lobbying remains a legitimate activity and is an important instrument to ensure the efficient flow of information in the process of public decision making. The

Committee is of the view that fee disclosure is not a desirable option for a number of reasons:

- Fee disclosure targeted at only one industry would constitute discrimination. Such discrimination might be justifiable were it to promote the attainment of an important policy objective. However, the evidence is by no means clear that greater transparency would result;
- Increased compliance and administrative costs;
- Requiring fee disclosure may be contrary to s. 20 of the *Access to Information Act*, a provision that prohibits government from disclosing information that could reasonably be expected to result in a material financial loss to, or gain to, or prejudice to, the

> competitive position of, or interference with, the contractual or other negotiations of a third party. Accordingly;

Recommendation 19:

The Committee is satisfied that the current disclosure requirements are satisfactory and, for that reason, does not recommend that the Act be amended in order to require that lobbyists disclose their fees.

6. Contingency Fees

Currently, contingency fee arrangements are not prohibited under the LRA. Lobbyists are permitted to operate on the basis of contingency fees except where the matter relates to procurement or grant of funds from the Government of Canada i.e. where a client will derive some benefit from the government with respect to procurement, or a grant of funds. Section 5(2)(*g*) of the LRA requires that lobbyists declare at the time of filing whether they are receiving contingency fees.

For similar reasons expressed above with respect to fee disclosure:

Recommendation 20:

The Committee is of the view that the current disclosure requirements are appropriate and adequate and, for that reason, does not recommend that the Act be amended with respect to contingency fees.

7. Tax Deductibility of Lobbying Fees

The issue of tax deductibility of lobbying fees was also discussed. The Committee is of the view that taxation policy is an issue properly within the purview of the Minister of Finance. Some witnesses proposed that the deduction for lobbying expenses be eliminated since, looked at one way, it is "a public subsidy for wealthy special interests to influence the democratic process" [Democracy Watch 8:15:45]. Consultant Lobbyists disagreed:

> ...This is an indirect way to suggest that lobbying fees are not a legitimate business expense like legal, accounting or management consulting services. If we all truly endorsed the four guiding principles of the Act, especially the principle that lobbying public office holders is a legitimate activity, then this initiative is patently not an appropriate suggestion....And in addition, if deductibility were removed, it would make the costs of having professional public policy counsel involved giving reasoned representation to government on the many complex issues...it would all be compromised and that, I suggest, would not be in the best interests of Parliamentarians or of the public service and it would be an undeniable step backward in a process that has evolved positively in the last 15 years. [John Scott 12:09:30]

The Committee is of the view that federal taxation policy with respect to business expenses is a question that is dealt with in the Income Tax Act, and is properly within the mandate of the Minister of Finance. While the issue will certainly have an impact on lobbying, it is clear that the Committee's review of the Lobbyists Registration Act does not extend to the Income Tax Act. For these reasons:

Recommendation 21:

The Committee does not view the issue of the tax deductibility of lobbying expenses to be within its current mandate and, for that reason, makes no recommendation on the

issue.

8. Solicitor-Client Confidentiality

The last witness appearing before the Committee was the Canadian Bar Association. The CBA recommended certain measures be taken to avoid any potential conflict between the disclosure requirements under the Act and a lawyer's duty of confidentiality to clients. The CBA emphasized that it was not seeking an exemption for lawyers from the duty to disclose, except in the case where disclosure would compromise the professional obligation of confidentiality. The CBA recommended that section 4(2) of the Act be amended to read as follows:

> 4.(2) The Act does not apply in respect of...
>
> (c) any oral or written submission made to a public office holder by an individual on behalf of any person or organization where confidentiality is required by law.

The CBA suggested that "there can be no serious objection to the proposed amendment. Any objection could easily be overcome by a requirement that lawyers not disclosing information on ethical grounds would instead indicate their non-disclosure on those grounds in their filing with the Registrar."

Mr. Simon Potter (Second Vice-President, Canadian Bar Association) acknowledged that the conflict was unlikely to arise often:

> I expect this conflict to arise very infrequently but it is rapidly imaginable and plausible that there are situations in which the dilemma occurs to lawyers and when it does, lawyers, I think, must know from the statute that their paramount obligation is to protect the privilege which is their oath to protect. [Simon V. Potter 21:15:40]

To understand how conflict might arise, it is first important to understand the nature of solicitor-client privilege:

> ...It is not all communication with the client, but it is all communication meant to lead to, or obtain legal advice from, a lawyer or legal representation by the lawyer... What I learn from my client, I must disclose only as my client instructs. Even if a law tells me to disclose it, I must not disclose it. [Simon V. Potter 21:15:50]

This is an important point: only the client can instruct the lawyer to disclose the privileged information. If the client instructs the lawyer not to disclose, the lawyer must respect the client's instructions and keep the information confidential. So how does conflict arise between the duty to disclose a client's identity for the purpose of the registry and the duty not to disclose confidential information? Mr. Potter gives an example:

> I can imagine that I might be in court arguing that a particular statute — let's say a taxing statute — means x rather than y and that is the debate in court. And I'm representing someone who has a very large liability at stake, depending on whether it is x or y that that statute means, and the statute is ambiguous. And at the same time I am lobbying in order to get legislative clarification to that statute. It might be very harmful to my client in that litigation for it to come out that that client is actually looking for the legislative change on an ongoing basis... It may be interpreted as an admission that the law really does mean y rather than x. I can imagine that really hurting my client. [Simon V. Potter 21:16:00]

Mr. Potter provided a second illustration:

> ...you can imagine a family law situation in which there's a fight, for example, over custody. Someone might want to lobby for a legislative change, or a policy change, or

> a change to a regulation in how elementary pension is calculated, and that person is actually in court at the same time. It deprives that person from the right to go and lobby if it is going to expose that person to the information coming out that he really does think that the law is ambiguous enough that it does not favour him in his ongoing position in court. [Simon V. Potter 21:16:00]

The Committee does not share the CBA's views for several reasons: first, the lobbyists registry does not require that the lobbyist disclose in the registry the substance of the client's submissions; as such, there is no danger that those submissions will be used as evidence in court against the client. Moreover, even if the substance of the client's position were to be available, the Committee is of the view that the Canadian judiciary is sufficiently intelligent to recognize that a party may rely on different arguments in different venues. In fact, parties to a lawsuit frequently ? in fact, usually ? advance "alternative" arguments in their pleadings. Alternative arguments are clearly identified by the phrase "in the alternative, it is submitted that...." Courts deal with these arguments in exactly the manner they are offered ? as alternatives ? not as mutually exclusive or contradictory positions.

Secondly, although the CBA did not bring it to our attention, the Committee is mindful that the rules governing confidentiality are not absolute. Certain exceptions are set out, for example, in the Ontario Rules of Professional Conduct:

> The lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and should not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.
>
> When disclosure is required by law or by order of a court of competent jurisdiction, the lawyer should always be careful not to divulge more information than is required.

As is clear from these rules, a lawyer is permitted to disclose information when required by law to do so. There are other examples in federal law where lawyers are required to disclose information, for example, in the recently enacted amendments to the Proceeds of Crime (Money Laundering) Act. In cases like this, a lawyer facing disciplinary action for disclosing confidential information would be able to rely for his defence on the fact that the law required the disclosure.

The CBA proposed that, instead of registering the client, the lawyer/lobbyist might merely register their non-disclosure on the grounds of confidentiality in their filing with the Registrar. The Committee does not view this as a satisfactory solution. Permitting lawyers to merely state that "I object to disclosing my client's identity for reasons of privilege" instead of actually registering would have at least two detrimental effects. Most obvious is the fact that it would thwart the purpose of the registry, which aims at identifying clients to the public; the second point is the potential for abuse of the privilege. Privilege belongs to the client; the lawyer may assert the privilege on behalf of the client, either of the lawyer's own initiative, or if the client instructs the lawyer to do so. The lawyer is required to do so in either case. If the lawyer cannot in good conscience follow those instructions, the lawyer must no longer represent the client and refer the file elsewhere.

> There is no doubt that if the client does not give you the lawyer the right to disclose the name, then the lawyer under the current statute should not be doing the lobbying.... [Simon V. Potter 21:16:10]

The Committee is concerned that, in the amendment proposed by the CBA, there is nothing to prevent any client, or indeed every client, from shielding his identity merely by advancing a claim of privilege.

The Committee is mindful of the concern expressed by the CBA that the duty to disclose a client's identify may place the lawyer in a conflict of interest and that in rare instances this may result in the client

being required to engage different counsel:

> When it would be harmful for the client to have the client's identity disclosed or other piece of information...and the client cannot bring himself or herself to waive that obligation of privilege.... Should it be that the lawyer must absolutely refuse to represent that client? ....a lawyer has an ethical obligation not to just drop a client. [Simon V. Potter 21:16:05]

The conflict situation described by Mr. Potter is a very rare occurrence. He noted that he himself has never encountered the issue in representing over 10,000 clients throughout his career. The Committee's response to the recommendation must balance the urgency of the problem against the risks posed by the solution. On balance, the Committee is of the view that the disclosure required by the LRA is unlikely to materially prejudice litigants in court proceedings. At the same time, the amendment proposed could be used in an improper fashion to defeat the purpose of the registry. In some rare cases, then, litigant/clients might be put to the additional expense of retaining separate counsel to represent their interests in one of the two proceedings. Accordingly:

Recommendation 22:

The Committee is of the view that, while the requirement to disclose a client's identity could, in rare cases, cause can see some hardship to a litigant in a court proceeding, maintaining the integrity of the lobbyists registry is a more pressing policy objective and, on that basis, the Committee does not propose to amend the Act to create an exception based on solicitor-client privilege to the general registration requirements.

In conclusion, with respect to current disclosure requirements, the Committee is satisfied that the current disclosure regime represents the correct balance in view of the fundamental principles set out in the Act and, for that reason does not recommend any changes to the current disclosure requirements for lobbyists.

▶ Next

CHAPTER 4
CONFLICT OF INTEREST AND ACCESS TO GOVERNMENT

> The important aspect is to ensure that your policy process is as open and transparent as possible. In this way people know who is involved, know who is giving the information and the advice, and know it is possible to challenge something on the basis of what they know. [John Chenier 14:17:00]

The Committee discussed several aspects of conflict of interest. Conflict of interest and access to government are related issues. The essential problem in conflict of interest is that it distorts the public decision-making process and, as a result, erodes public confidence in institutions of government. It does so because parties to the conflict are able to gain some "advantage," or to circumvent the normal "rules." Those rules, to which everyone else is subject, are designed to ensure that government makes its decisions in accordance with sound management principles and in accordance with principles of public trust. For this reason, conflict ? and the appearance of conflict ? if left unchecked, undermines public confidence in the integrity of the process by which public decisions are made.

There is a second, related aspect of conflict and it involves the idea of "information." Information is, perhaps, the most critical "input" in the decision-making process. Whether the decision is one of simple contract, e.g. assessing bids on a public tender, or designing a complicated regulatory scheme that will affect an entire industry, it is of the utmost importance to decision makers that they have information that is reliable, up-to-date and complete. For this reason, the integrity of the public decision-making process relies on the open exchange of information between government and stakeholder. Public policy must necessarily balance competing interests; that cannot occur if all, or at least many, interests are not represented. Where conflict of interest exists, it impedes the free exchange of information by allowing one person ? with one view, one proposal, one bid, etc. ? to advance their position to the exclusion of others. Over time, this also contributes to the erosion of public confidence in government.

Restoring public policy in the policy-making process requires three things be done: first, we must continue to ensure that conflict of interest is not allowed to occur. That issue has been addressed in the current Act and the Lobbyists Code of Conduct. The second issue, certainly of equal importance, is that we must further open up the policy-making process; we must take steps to remove all impediments to the free exchange of information between the public and government; and finally, we must actively encourage everyone concerned to participate in the exchange of ideas; in brief, a truly public debate over public policy.

The first issue for the Committee's consideration, as summed up by one witness:

> ...The ability of the profession to represent different interests in a transparent manner without compromising the advice which may be given to, and the action for, clients with opposing interests.... [John Scott 12:09:30]

1. "Chinese Walls"

The community of lobbyists is not a large one. Conflicts of interest may occur, for example, when two lobbyists in the same firm work on different sides of the same issue, either concurrently or sequentially, or in cases where a firm may be retained to advise the government on an issue and

subsequently be retained by the private sector to make representations on the same or related issues. In such cases, precautions are usually taken to ensure that confidential information is not exchanged.

Officially, the Registrar has expressed the view that the Canadian Bar Association's guidelines for "chinese walls" are adequate to pre-empt possible conflict. However, as the Ethics Counsellor noted:

> Chinese walls are very hard to maintain. I'm not arguing that the Conflict of Interest Code here in fact does use Chinese walls. There are occasions where you have to put them in place in order to protect the integrity of certain information. This is a major problem with law firms and accounting firms, and will increasingly be the case as you get larger and larger firms being formed. [Howard Wilson 5:16:50]

While some industry participants view the guidelines as "appropriate where litigation and court related issues of evidence are involved," some concern was expressed that the guidelines are flawed in that they "focus on excluding the conflicted person from any contact with colleagues who may be working on a conflicted issue." However,

> In the lobbying profession it is not a matter of isolating the person, but of isolating the work that is being done. The Canadian Bar Association guidelines are not practical or relevant in that context. [John Scott 12:09:30]

As a result, some lobbying firms have established their own conflict protocol. Government Policy Consultants, for example, has such a code, which in its view:

> ...fully meets the lobbyist code but which applies more workable restraints within a lobbying type of professior More important, the GPC protocol has been endorsed by our clients, who have the most at stake, as protecting their interests. They say that it protects their interests entirely while retaining the excellence and integrity of the service provided to them. [John Scott 12:09:30]

Two important points flow from this statement. The first is that conflict of interest, while undeniably having implications for the public policy debate, remains primarily a concern of the clients whose interests are being represented. In the legal profession, when a lawyer represents or advises clients with competing interests, the lawyer must declare the conflict and may continue only if the consent of the clients is obtained. Lobbying, like law, involves advocating on behalf of a client; lobbying differs primarily in the nature of the services rendered and in the fact that one of the parties is the Canadian government, and ultimately the Canadian taxpayer. Does that mean that every taxpayer should be informed of every potential conflict and asked for their informed consent? Some would say that this should be our aim. It is a weighty question, fundamentally related to the concept of representative government.

Canadians elect MPs to make laws for them and to spend their tax dollars wisely, in a way that is consistent with the public trust. But the scope and complexity of modern government requires that Parliament delegate some of its authority; and so it empowers the executive branch, i.e. "the department," with the authority to make regulations, to formulate policy, and to procure goods and services in order to ensure the continued effective functioning of government in the service of Canadians. These tasks are carried out through countless individual transactions involving thousands of public and private sector employees. In that process conflicts, real and apparent, may arise. How far do we go to ensure that the process is carried out with integrity? Do we install video cameras or tape recorders in every public office? Should public servants and elected representatives be kept under constant scrutiny? Should we require that all public servants and elected representatives disclose the most minute details of their workday, every phone call, every conversation? If so, why stop there? Why not have them disclose a list of their friends and relatives? Some would say this should be our goal. The Committee does not endorse that view. And neither does it accept the premise upon which it rests ? that public servants are inherently corrupt or corruptible and, for the public good, must be kept under constant scrutiny.

The Committee believes strongly that, for the thousands of men and women employed in it, the "public service" is more than just the name of their employer ? it is an idea; an idea that, when you work for the government, you work for all Canadians. You serve the public. The Committee believes that, with very few exceptions, the men and women of the Canadian public service understand and honour the notion of the public trust and carry out their duties honestly and in good faith. This is the most fundamental axiom of representative government: that we are justified in placing our faith in our public servants.

The Lobbyists Code of Conduct is clear and unequivocal in prohibiting lobbyists from representing conflicting or competing interests without the informed consent of those whose interests are involved. But whose interests are involved? In the broadest sense, the Canadian taxpayer; but, speaking practically, the consent of every taxpayer cannot be sought in every decision. Instead, we trust our public servants to do the right thing, to act

faithfully and diligently in discharging the public trust. This is the person, in practice, to whom the conflict must be declared and the person whom we trust to ensure that the interests of the ultimate client, the Canadian taxpayer, are protected.

In addition, Consultant Lobbyists are required to advise public office holders that they have informed their clients of any "actual, potential or apparent" conflict of interest and obtained their informed consent to continue. As well, the Lobbyists Code states that lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would "constitute an improper influence." The Committee is satisfied that the principles set out in the Lobbyists Code of Conduct are sufficient to ensure that, where potential conflict arises, it is addressed in a manner consistent with the public trust.

2. Pre-empting conflict

Democracy Watch made a number of recommendations aimed at ensuring conflict, or the potential for conflict, does not arise. The Committee is concerned that the response may not be proportional to the actual problem. Among the many recommendations made by Democracy Watch, three were addressed directly to avoiding conflict or the appearance of conflict:

> ...Lobbyists should be required to disclose past or current work with governments, political parties, or candidates for federal public office. [Aaron Freeman 8:15:45]

What is not immediately clear is how disclosing such information would prevent conflicts. It seems to flow from the presumption that a person, by getting involved with party politics or government, becomes privy to valuable confidential information by virtue of which the person may gain unfair advantage. But does every involvement by an individual with "government" or "political parties" result in the exchange of confidential information or the promise of "payback for services rendered"? How far back in time would the requirement extend? How long does "valuable" information keep its value? How long before "contacts" go cold? The Committee heard that, in politics, contacts and information go stale very quickly:

> In the real world anything you know when you leave a job is known on the street within six months. So whether it's procurement, whether it's something else, everyone knows it after six months — cabinet secrets, whatever. It's all in the public domain. So realistically, that knowledge edge has dissipated. In some cases it's gone in two weeks. I think I can assure you that in most cases you don't know anything that most people who really want to find out and are working the system in any sort of assiduous fashion haven't figured out after six months. [Scott Proudfoot 15:10:50]

In any case, information of this sort ? if it reveals anything of value ? is largely available through other sources. For all of these reasons, the Committee does not adopt this recommendation. Another recommendation from Democracy Watch would prohibit lobbyists

> ... from serving in senior positions on campaigns of political parties or candidates.... [Aaron Freeman 8:16:15]

Mr. Freeman noted that "this is prohibited in two U.S. States." Presumably then, it is tolerated in the other 48. The recommendation presents certain conceptual difficulties, not the least of which is the impact on the individual's freedom of association, a right guaranteed by the Canadian Charter of Rights and Freedoms. The suggestion here appears to be that "political" lobbyists will be able to call in favours among their friends that they helped to elect. The Committee finds little to agree with in this characterization of Canada's elected representatives.

A third recommendation from Democracy Watch:

> Lobbyists should be prohibited from doing work for the government departments that they are lobbying. [Aaron Freeman 8:15:45]

This recommendation aims at preventing conflict of interest resulting from the unauthorized disclosure of confidential information between associates in the same firm that might be working on opposite sides of an issue. Modern departments of government are vast operations, involving hundreds or thousands of employees. Lobbyists may be consulted for many purposes, not the least of which may be for their considerable expertise on policy issues. The Committee is of the view that it would be counterproductive to issue a blanket prohibition of the sort suggested. Departmental policy advisors routinely deal with highly specialized and technical issues. In many cases, only a handful of individuals in the country might have the necessary expertise to be able to assist the department by providing informed analysis. The suggested prohibition would be very likely to lead to all the available experts being "conflicted out," and precluded from providing advice to the department.

Still, it may be that potential for conflict exists in some situations. Two witnesses, who otherwise found little to agree on, expressed the issue:

> ...There may be an issue here, to the extent that governments or public officials are contracting out consultations to private consultants. Then those consultants themselves are providing some input in the consultation themselves. That may be a conflict of interest that you may want to consider. [Jayson Myers 7:09:20]

The point was seconded with an illustration by Mr. Freeman:

> ...When the Treasury Board decided to develop guidelines for the high-tech sector, and they opted to hire a high-tech lobbyist — a lobbyist that represents high-tech firms — to facilitate the development of those guidelines, was the end process a pro-industry result? Some would say yes, some would say no. [Aaron Freeman 8:16:00]

The Committee took particular note of what appears to be an increasing trend toward "contracting out" policy studies and consultation to private sector consulting firms. While the identity of the consulting firm itself would be reflected in the public record, what would not be clear is who, precisely, is advising the consultants? As Sean Moore explains the issue, the trend is perhaps most evident in the development of science policy:

> The science war.... The most complicated, difficult, and frustrating type of lobbying these days is anything that has to do with science and health....You can go out and buy almost any science you want these days, and how much transparency is there in

> that? Should we be requiring people who are providing what is supposed to be scientific evidence on something...should there be much more information about who paid them to do this? [Sean Moore 14:17:00]

The issue does not suggest an easy solution:

> ...It's an awfully long food chain you follow after a while as to what sort of information is used and is provided to government. Do you have to catalogue how the human labour that went into producing that research was paid for at every point along the way? I don't know. [Sean Moore 14:17:00]

John Chenier agreed that the "process would be very laborious and perhaps not airtight."

> I think the important aspect is to ensure that your policy process is as open and transparent as possible. In this way people know who is involved, know who is giving the information and the advice, and know it is possible to challenge something on the basis of what they know. However, at the current time it may be that the people who are consulted, the people who are involved, are not generally known to anyone else because the consultative process is closed. Therein you would have your problem. [John Chenier 14:17:00]

However, having identified the problem, no clear solution was suggested. It is questionable whether expanding the disclosure obligations under the lobbyists registry would resolve the issue. Again, the question becomes: how much disclosure should we require?

> I don't think you should ask people whether they have ever worked for R.J. Reynolds Tobacco or whatever in order to make them say what they did 15 years ago, something that will taint all their evidence. I don't think you would necessarily want a process like that. [John Chenier 14:17:10]

The Committee is mindful of the potential for conflicts when private sector consultants provide advice on the development of government policy. The subject is of special concern for the reason that its real effect on the direction of public policy is not necessarily apparent and, more importantly, not easily discoverable by the public. A complete examination of this important emerging issue is beyond the scope of the current study, however, and for that reason the Committee is unable to offer definitive recommendations. However:

Recommendation 23:

The Committee recommends that the role of private sector consultants in developing government policy is a subject that Parliament should study further, with a view to promoting transparency and ensuring that conflicts of interest do not arise.

3. The Cooling Off Period

Another aspect of conflict of interest relates to the post-employment "cooling off period" to which some public office holders are subject after leaving office. The "cooling off" period refers to those provisions in the Post-Employment Conflict of Interest Code that impose restrictions on a former public office holder's post-employment lobbying activities. The Committee is aware that issues arising under the Conflict of Interest and Post-Employment Code are beyond the scope of the current study; again, however, the Ethics Counsellor's dual role leads to blurring of the boundaries and, for this reason, many witnesses spoke to issues related to the Conflict of Interest Code.

The Committee heard that, as important as it is to ensure real fairness exists in the system, it is important that the system appear to be fair as well. One member discussed the great concern Canadians

have with the "easy access and congenial familiarity that some lobbyists have with key decision-makers" and the relationship that may exist between decision-makers and those lobbyists who were once involved in the decision-making process. The Ethics Counsellor addressed the purpose underlying the "cooling off period":

> The post-employment provisions are in the Conflict of Interest Code for precisely the concerns that you have raised, that there might be a perception that someone will be able to take advantage in their first year after leaving office to make representations on behalf of others with some sense that they have a preferred status. That's why we have a cooling off period of one year, both with respect to who you can take a job with and that is if you have direct and significant official dealings with some company, you are not able to take a job with that company and you cannot make representations back to those departments that you had direct and significant dealings with again for a period of one year. [Howard Wilson 5:16:45]

The Ethics Counsellor also emphasized the importance, and the difficulty of, striking the right balance:

> This is essentially a balance. It's a balance between people not being in a position to take undue advantage of their last year in office, but also to remember that if you don't afford people the opportunity to build on their experiences and get on with a future life, it's going to be very, very hard to attract people into this life at all. [Howard Wilson 5:16:45]

The Ethics Counsellor discussed his practical experience with the conflict of interest rules:

> My experience in the past several years is that they have been working quite well. We meet with, for example, political staffers frequently who, if they're going to be having continuing dealings with government, certainly with Ministers and other senior officials. It can be quite restrictive... This is particularly the case if there is a fairly major electoral change. I think the Lobbyists Code has worked well in that we communicate with each one of these individuals who is subject to the Lobbyists Code annually. We talk to them in advance of their departure as to what limitations are going to be placed on them about what they can and cannot do and I can tell you that these prohibited activities that you're raising, and that is who you can take a job with and who you can lobby back, can be very limiting. [Howard Wilson 5:16:50]

Democracy Watch did not agree:

> Two years is too short, there's usually not an election within that two-year period, there isn't a change of government, let alone a change in bureaucracy and the Minister's relationships are still too strong with departments. [Duff Conacher 8:16:25]

However, as John Chenier expressed the point:

> It's a very, very difficult thing to deny a person their living. They're going to leave one career and go into another. How can you say, "I'm sorry, you can't earn a living for 12 months or 18 months or two years. [John Chenier 14:16:35]

Scott Proudfoot also addressed the issue:

> So I really think you have to sit there and ask, what are you really trying to do — just really punish people? Do you really want to sit there and say to people, look, if you've been a successful lawyer, and you've had a practice in a certain area, we're going to make it as hard as hell for you to go back to that area and practice after you leave public life to make a living? Why would I run for office? You have to sit there and ask, in how many ways do we discourage people from coming into public life? We're really coming up with new ones all the time [Scott Proudfoot 15:10:55]

The Committee concurs in this view. While the adequacy of the "cooling off period" prescribed by

the Conflict of Interest and Post-Employment Code for Public Office Holders is really outside the scope of the present study, the Committee considers that the issue must be understood in light of the realities of life after politics. In many cases, employment prospects of former Parliamentarians may be limited. However, one thing that Members of Parliament take away from their tenure on the Hill is a good understanding of the process by which policy becomes law. It is, perhaps, not unreasonable to expect that a former Parliamentarian might wish to make a living from that knowledge, legitimately acquired in the service of Canadians. Still, it is important to ensure that Parliamentarians returning to the Hill as lobbyists should be mindful of conducting themselves in a way that upholds the integrity of the institutions of Parliament and government.

The Committee is aware that the issue of the post-employment "cooling off period' is not a subject that falls within the current study, and for that reason makes no recommendation on that subject. Moreover, the Committee is aware that this and other related subjects have been studied in the past by committees of both chambers, and will likely be the subject of further study in future. In any case, the Committee is of the view that such a discussion is perhaps best reserved for the appropriate committee.

4. Integrity and Access to Government

At the heart of any discussion about lobbying lies the larger issue of integrity in government. Where conflict of interest is permitted to exist it undermines integrity by permitting one interest or one point of view to be advanced to the exclusion of others. The lobbyists registry does a great deal to open the process and expose potential conflicts to public scrutiny. People can easily find out who is talking to government, who is providing information and influencing ? or trying to influence ? the opinions of decision-makers. That information is readily available to anyone with Internet access. Access to this information promotes integrity in government by providing a clear window onto the policy-making process: the lobbyists registry reveals, among other things, the issues that are being considered, exactly where "inside government" they are being considered and the identity of the private sector interests and NGOs that are involved in trying to influence that process. In effect, the lobbyists registry shows precisely where "inside government" the debate is taking place, and thereby opens that debate to public participation. The possibility of one strategically placed lobbyist "hijacking" the public policy debate, shutting out opposing views and other sources of information, appears to no longer exist in practical terms. This was the purpose for which the system was created, and it has largely succeeded. Pierre Morin made the point:

> ...Initially the Act came about because of so-called scandals....That brought the revision of the 1988 act into its current version. But you're still trying to resolve the 1988 issue. Maybe you should look at it this way: what are the issues in 2001? What issues — such as the e-community — are before you here? That's really the issue. Don't try to resolve the scandals in 1988. They're long gone. [Pierre Morin 15:10:30]

The point was expanded upon by Peter Clark. As he described it, the Act was a statute:

> ...that was essentially designed to guard against influence-peddling and the selling of contacts.... That's why we have to report every meeting we arrange....What we're dealing with now is a government that's based far more on transparency. Because of the Internet, we have to deal in information; we can't deal in influence. Governments have to base policies on information. But what we need to know is, where is the information coming from, and who do the people represent? [Peter Clark 15:10:35]

However, even though the Act has brought a measure of transparency to the decision-making process, this is only part of the picture. The lobbyists registry forms part of a larger legislative framework, which aims at ensuring integrity in the process of public decision making by, first, making the process transparent and, second, by opening the process to wide public participation. But, the Committee heard, the process by which policy is made still cannot be described as inclusive:

> DAD: decide, announce, defend. That is the approach of Parliamentary government, decide, announce, defend, rather than when big issues are coming up being much more open and saying "this is the issue, these are the options, these are some of the pros and cons to each of these options. [Sean Moore 14:16:40]

Democracy Watch makes the same point:

> Most Canadians do not understand the legislative process. They believe, when a bill has been introduced, that this is the first decision that's been made and that things are now open to be changed, and they can send in their letter and the Minister will consider it. No, all the decisions have already been made. [Duff Conacher 8:15:55]

What emerges from this is the point that integrity in government really has two aspects: one is the desire Canadians have to see that the decisions being made by their government are being made fairly and intelligently, in accordance with principles of sound business management and the public trust. At the same time, though, Canadians also want to be involved in the process by which those decisions are made. Canadians quite rightly want to know who is driving the public policy debate, what factors are shaping the discussions and the decisions that are being made. But, equally important, ordinary Canadians need assurance that their government is listening to their concerns as well. It is not enough that we simply open the door; we must encourage all Canadians to join the discussion.

Despite their best efforts, governments and "politicians" are today sometimes viewed with suspicion :

> A lot of times, when you look at attitudes vis-à-vis the way people approach lobbying and the issues, it's almost like they want to...say to public servants, "We don't trust you", and to elected officials, "We don't trust you; we're going to stamp a big sign on your forehead that says we don't trust you." Frankly, you can trust just about everyone there, with very few exceptions, and to have everyone operate under suspicion is really not healthy and is actually terribly expensive and costly when you look at where it leads to. [Scott Proudfoot 15:10:55]

While the reasons for modern scepticism about government are many, one is certainly the feeling, on the part of many Canadians, that they cannot make a difference, that their government is not interested in hearing what they have to say. Reversing this trend, and restoring faith in institutions of government, will require a significant change in thinking about the way governments make policy. We must begin to engage Canadians earlier in the policy development process, and that engagement must be active; governments must encourage it and seek it out.

The Committee is also of the view that there is a vital role for Members of Parliament in the policy-making process. Sean Moore, recalling his years as a Washington, D.C. lobbyist, talked about the difference between Canadian MPs and their "American brothers and sisters...":

> The relative role of legislators in this country is very modest. That's not to say that when legislative matters come up you ignore MPs, but frankly, they are usually much farther down the list of people you need to deal with, because the genus of legislation in this country usually is two or three years prior to the date it hits the floor of the House of Commons. [Sean Moore 14:16:20]

Notably, many members of the Committee expressed exception to Mr. Moore's characterization of the role of MPs in the legislative process.

Some have reasoned that modern skepticism towards government and institutions of state is the result of the relentless and penetrating (and, some would say, cynical) eye of the media in the post-Watergate era. Today, that same media may yet provide the means of restoring public confidence in government. Today, communications technology ? most obviously the Internet ? allows the exchange of

news, information and ideas, with a breadth of audience and a speed of delivery unimaginable 20 years ago. The Committee heard considerable discussion about the Internet, how it has begun to change the way we "do government," and how that impact will be increasingly felt. "Meaningful consultations" may become more than something we merely aim at. It may be within our grasp.

▶ Next

CHAPTER 5
POLICY MAKING IN THE INFORMATION AGE - LOBBYING, ACCESS AND THE INTERNET

> Lobbying is really about taking private interests and making them merge with the public interest, while being totally transparent... The Internet is a key factor in making that happen today....We think there's a critical role for government and for this institution to make sure it happens in a meaningful way. [Michael Teeter 15:10:10]

> The Lobbyists Registration Act is really about transparency and making public advocacy more transparent. While the Act is, in our experience, well run and meeting a real need, to some extent I think there really are bigger things going on. In fact, there are things government can do to really open up the process a heck of a lot more, beyond the Lobbyists Registration Act — and what we're really talking about is the public consultation process and how it works. [Scott Proudfoot 15:10:20]

1. The Power of the Internet

One of the most interesting topics of discussion in which the Committee engaged was on the subject of the Internet, and its impact on lobbying and the public consultation process. The discussion was led by Scott Proudfoot and Michael Teeter, co-creators of www.Hillwatch.com, a Web portal designed as a politics and public policy on-line resource centre for people working in politics and government or for people who want to influence government. The site categorizes and provides links to over 2,300 sites to help people find useful resources. For example, the site lists 450 Canadian groups and organizations in different issue areas, as well as several hundred international groups. The site is intended to showcase the public policy positions of the private sector associations, NGOs and coalitions corporations. Since its creation six months ago, the site has attracted some 40,000 visitors, attesting to the power of the Internet:

> The power of the Internet to really shape a lot of public policy discussion really arrives from the fact of where people go first for information. Increasingly, with over 50% of the Canadian population connected, with the people involved in the press, with people involved in public policy discussion, with association executives, I think you'll find the rate of connection is probably around 80% to 90% in many instances.[Scott Proudfoot 15:10:10]

What is the nature of the link between the Internet and lobbying? The most obvious connection is the fact that the lobbyists registry is online and some 98% of registrations are done electronically. The ready availability of the registry on the Internet has, in the opinion of most observers, contributed to a significant improvement in transparency in the public policy-making process:

> The theory behind this is that if you really want to know who's saying what on the issues you're debating, and what issues are being debated inside governments and so on, you really can go to the Internet to find out. If you put them together in an organized fashion and in a meaningful fashion, think of what it gives the public. [Michael Teeter 15:10:10]

Interestingly, it appears to be the case that the groups making most effective use of the new medium as a lobbying tool are often those with the fewest resources:

> The groups that have understood the value of the Internet as a campaign tool, as a tool to promote their points of view, have been the civil society groups. It's not that

> they're smarter than anyone else. In fact, they have less resources. They therefore figured out that the Internet is sort of a tool that allows them to do stuff online better, more cheaply, and quicker, and they've gravitated to this. [Scott Proudfoot 15:10:15]

The effective use of the Internet by civil society groups has prompted other organizations to make their own policies clear. An example was offered of the GMO food debate:

> The anti-GMO food activists use the Internet to attack the mainstream corporations. The mainstream corporations, which didn't know what hit them, frankly, all of a sudden found they had to really respond in public and defend their position. If you go to their corporate sites now, or if you go to their association sites, there's a lot of good, reliable information, there's a lot of self-interested information, there's a lot of scientific evidence, and there's a lot of fear-mongering. There's a whole potpourri of information that you can find on the issue. Four or five years ago, you wouldn't have seen any of this information. Now it's all largely publicly accessible. Basically, beyond the Lobbyists Registration Act, we think the Internet is really pushing the whole industry to be a heck of a lot more public and transparent where people can find it. [Scott Proudfoot 15:10:15]

But many public interest groups are doing more than just looking for information:

> They're organizing to put pressure on governments....They are lobbyists, but they're not just one person representing somebody behind the scenes and having to register. You're talking about millions using the Internet to organize themselves. [Michael Teeter 15:10:20]

2. A Challenge for Governments

The emergence of the Internet poses a number of questions for legislators and other policy-makers. Members of Parliament are already familiar with at least one issue: What to do with all the E-mail?

> Some of this comes with some downside. One of the downside effects is that you, as members of Parliament, are going to be subjected to a heck of a lot more of what I call political spam. We just saw a recent report that senators in the U.S. are getting 55,000 E-mails a month. House representatives are getting 8,000. [Scott Proudfoot 15:10:15]

The growth of Internet lobbying also raises the difficult question of determining who is behind a Web site:

> Associations have structures, they have laws that regulate their incorporation, and so on. But these don't. They don't have leadership, they don't have mandates, and they don't have rules that govern their behaviour. A key challenge for governments will therefore be what to do with these things. What do you do with these communities that are putting pressure on you? [Michael Teeter 15:10:20]

Scott Proudfoot suggested that the solution to the problem lies with the development of voluntary codes:

> So if there is a concern about disclosure and the lack of disclosure with these groups, they all have websites. If we could get them to agree on a good code of practice voluntarily, I'm sure most of them would voluntarily submit to it and would be part of it. I think that would solve a lot of the problems. [Scott Proudfoot 15:10:40]

3. Raising Public Awareness

In spite of these concerns, it is clear that the Internet can be a powerful tool for raising public awareness

by "getting the message out":

> A lot of people want more direct democracy. They don't just want to replace representatives; I think they want to replace the media, too, if not more so. What you're going to get is the "Animal Rights Supper Hour" or the "Anti-Globalization Evening Show". That's really where it's going. It's going to be a very different world that's going to force all of us to adjust in a fairly major way [Scott Proudfoot 15:10:15]

In addition to contributing to greater public awareness about important issues, the Internet will, at the same time, permit policy-makers to expand the process of public consultations in a meaningful way. The Committee is aware that this process is already underway to some degree in the Canadian government and governments around the world:

> The very officials we're talking about now who are being lobbied by lobbyists form e-communities of their own. E-communities are being formed inside government as we speak, and these communities are taking policy positions... [Michael Teeter 15:10:20]

The Committee listened with great interest to the U.K. experience with online consultations. The U.K government has created a "citizen portal" called UK Online. In the portal called "Citizen Space" they have a button labelled "Consultations" that takes the visitor to a central registry, where information is available about all consultations going on in the government. The site also permits the visitor to link to background information provided by officials, and provides the coordinates for who to contact and where to send submissions. The central registry links the various departmental registries. In addition, some departmental registries link to departmental sites, which provide a "Consultations" button. In the normal course, the sites provide information about which consultations are live and which have just closed. For those that have closed and for which the government has rendered a decision, a summary is provided of who appeared, what was said, and what the government's decision was.

Hillwatch's co-founders suggested that, by creating a similar site, the Canadian government could create the means and the incentives for Canadians to participate in a more meaningful way in the public policy debate:

> We think it's a heck of a good idea. People would have more incentive to get involved, to be included, to find out what's going on, and we'd recommend that you just go over there and steal the idea, holus-bolus, and apply it in Canada. [Scott Proudfoot 15:10:20]

However, Hillwatch was of the view that the U.K. system could be improved upon. One way would be to provide E-mail notification of pending consulations to anyone who had expressed an interest:

> ...all you have to do is create, as part of a consultation registry, a list of thirty or forty key topics. Are you interested in these topics? Put in your check and put in your E-mail. We'll then send you an E-mail to tell you when a consultation comes up. You can then go to the consultation site, get more information, get the background, and get involved if you want. It's very simple, cheap, and easy technology. [Scott Proudfoot 15:10:20]

Hillwatch offered a second constructive suggestion for improvement:

> If you have a consultation registry, why not have a submission button? Have a list of people who have made submissions. They could provide the links to the material on their sites. They could provide the links to the material on the site where people can view it, or the government could provide some sort of central registry with a searchable database. [Scott Proudfoot 15:10:20]

The Committee is mindful, of course, that the confidentiality of sensitive business information

should still be protected. For that reason, parties making submissions would have to be given the choice of disclosing the substance of their brief:

> Now there is one important caveat here: I think it has to be voluntary. There are times when we're involved with clients and the information is confidential — we shouldn't be giving away information we wouldn't want their competitors to know. I think people have to have the right not to volunteer information. But I think most people would participate. [Scott Proudfoot 15:10:25]

The Committee found much to support in the recommendations of Hillwatch. We are aware that the Government of Canada has already set up a Web portal to access government institutions (www.canada.gc.ca), into which these recommended innovations could easily be incorporated.

4. The Role of Parliamentarians

> Where is the elected member of Parliament in all this? To some extent, you can be left out of the process. As we talk about consultative mechanisms and e-communities, I think we have to think about how to build elected representatives and democratic accountability into the process. [Scott Proudfoot 15:10:25]

Members of the Committee are aware of what some observers have referred to as the steady diminution of the role of ordinary MP in the policy-making process. Many members come to Parliament with great experience and expertise in different areas; the traditional view is that MPs are involved in the policy debate only at the point when a bill comes before us. Members of Parliament do, in fact, get involved earlier in the process. In fact, effective representation of our constituents often makes our early involvement necessary. But Members of Parliament are often kept no better informed than members of the public about what goes on inside the various departments of government. Hillwatch suggested a simple means by which the Internet could be used to bring Members "into the loop" earlier in the process.

> ...there should be a button that says: Contact your MP. If something is important to you, send your representation to your MP. You have to build that in. As e-government evolves, you have to look for other ways to build MPs into the process. I'd be very concerned if we didn't make that a major priority. [Scott Proudfoot 15:10:25]

But will this mean even more work for Members, in addition to their already busy schedules? Perhaps. But the Committee looks upon it as an opportunity to represent our constituents more effectively and efficiently, by entering into an ongoing "e-dialogue" with them. In addition to increasing our effectiveness as elected representatives, Hillwatch reminded the Committee that there are other advantages to actively engaging with constituents in this way:

> ...when people communicate with you as MPs via the Internet, from your constituency or otherwise, you should look on that as an opportunity to capture data. Once you learn something about a person, that person essentially becomes a volunteer. American politicians have perfected this, and it's coming to Canada. [Michael Teeter 15:10:30]

The Committee is of the view that the Internet offers a unique and exciting opportunity for the Government of Canada and Members of Parliament to engage Canadians in the public policy debate to an unprecedented degree. By making it easy for Canadians to have their views heard, public policy-making can reflect the views and interests of all Canadians, and not just of those who can afford access to government. By engaging Canadians in a meaningful way in the debate, public policy can become truly reflective of the wishes of all Canadians.

In order to promote transparency in the process by which public decision making is made, and in order to ensure that all Canadians are able to contribute effectively to the policymaking process:

Recommendation 24:

The Committee recommends that the Department of Industry, in consultation with other departments of government, devote the necessary resources and proceed with all deliberateness to design and implement an Internet architecture, to be incorporated into the Government of Canada website (http://www.canada.gc.ca), and to include the following features:

- **An easy-to-find "Consultations" portal to take visitors to a central registry containing information about all consultations currently going on in the government, with links to the departments undertaking the consultations;**
- **Additional links to background information prepared or received by government in relation to a consultation;**
- **Links to persons or departments to contact and where to send submissions;**
- **Information about which consultations are open and which have just closed; and, for those that have closed and for which the government has rendered a decision, a summary of who appeared, what was said, what the government's decision was and the reasons for it;**
- **An E-mail notice subscription list to permit Canadians to be informed of upcoming consultations on subjects of concern to them;**
- **A "contact your MP" button to permit Canadians to copy their MPs with their submissions to government.**

Recommendation 25:

As well, once the consultations portal is available, the Committee recommends that the government undertake to advertise and publicize the site in order to make Canadians aware of its existence and of the opportunity to become involved in the public policy-making process.

▶ Next

Français - Table of Contents

Previous ◀ ▶ Next

CONCLUSION

Based on the evidence presented for our consideration, the Committee is of the view that the lobbyists registration system is, on balance, working well to achieve the objectives for which it was designed. The recommendations we have put forward cannot really be said to be fundamental; however, we believe they will result in a more efficient, more effective, and more enforceable system.

We heard many suggestions as to how the system might work even better, and we listened to all those suggestions with interest and open minds. The issues were often complex, involving questions ranging far beyond a study of the Act itself. In this report, we have tried to clarify how we approached those suggestions, how we "thought them through" and why we have made the recommendations we have.

While many important ideas emerged from our discussion, perhaps the most significant is that the lobbyists registration system is really best understood as "a work in progress." Just as our thinking must continue to evolve on subjects of transparency and access to government, so must our legislative framework remain flexible and ready to evolve; in this way, we will be able to respond to significant changes in the environment in which public policy decisions are made. The emergence of the Internet is the most obvious of these significant changes.

The pace of technological change makes predicting the future an uncertain enterprise. The Act mandates only a single four-year review. Should the Act be reviewed again in four years time? Our current review is complete; yet we are reluctant to close the book, and to say that the Lobbyists Registration Act is sufficient, now and for all time, to ensure that the goals it reflects will continue to be achieved. This much is certain, though: We must continue to use all the means at our disposal to open the public policy debate to all Canadians equally, regardless of who they are or where in this country they live, and regardless of the means at their disposal. The age of the Internet ? the Information Age ? presents us with both unprecedented opportunities and unprecedented challenges. The Committee is confident that together we will continue to meet those challenges.

▶ Next

LIST OF RECOMMENDATIONS

Recommendation 1:

The Committee recommends that the Government undertake a study to determine rates of compliance under the Act and the reasons for non-compliance where it exists.

Recommendation 2:

The Committee recommends that the Act be amended to create a new office, which shall have the exclusive responsibility of investigating and reporting to Parliament on alleged violations of the *Lobbyists Code of Conduct*.

Recommendation 3:

The Committee recommends that the Registrar of Lobbyists, the Office of the Ethics Counsellor and the Department of Justice undertake further consultations with a view to determining the most appropriate legislative response to the enforcement issues arising from the use of the phrase "in an attempt to influence" in the Act.

Recommendation 4:

The Committee is of the view that the current two-year limitation period for the commencement of summary conviction proceedings under the Act is adequate and therefore does not recommend any change to the Act in this regard.

Recommendation 5:

Owing to the lack of support for the proposition among witnesses appearing before it, the Committee does not recommend that the Act be amended to apply an In-House (Organization) registration approach to In-House (Corporate) lobbyists.

Recommendation 6:

Owing to the considerable conceptual difficulties presented by the proposal, the Committee does not recommend that the Act be amended to create a so-called "qualitative" approach to registering lobbying activities.

Recommendation 7:

The Committee recommends that section 4(2)(c) of the Act be deleted in order to require lobbyists to register even when the lobbying contact was initiated by the public office holder.

Recommendation 8:

The Committee is of the view that the Lobbyists Registration Act is an act of great

public importance, and, as such, it demands of registrants the utmost good faith in complying with the spirit of the law, even where doing so may require more than mere compliance with the letter of the law. The Committee recommends that this fundamental principle be emphasized by the inclusion in the Act of a general anti-avoidance provision.

Recommendation 9:

For the purposes of simplifying the current deregistration requirements and promoting greater consistency of application of the Act, the Committee recommends that the same deregistration requirements should apply to all lobbyists.

Recommendation 10:

The Committee recommends that, in order to ensure that registrants update their filings in a timely fashion, the Registrar of Lobbyists provide an E-mail "update reminder" to all registrants at least 30 days in advance of the date upon which their registrations must be updated.

Recommendation 11:

In order to ensure that information in the lobbyists registry is kept up to date, the Committee recommends that all lobbyists should be required to update their filings semi-annually; however, the 30-day deregistration requirement currently set out in section 5(4) of the Act should be removed from the Act to the Lobbyists Code in order to remove it from the sanctions prescribed by the Act for failing to deregister within the 30-day time frame currently prescribed.

Recommendation 12:

The Committee also recommends that the Registrar draft a notice, to be displayed clearly on the lobbyists registry Web site, to the effect that because lobbyists are required to update their filings semi-annually, certain client relationships may no longer be active; and accordingly, persons are encouraged to verify with the lobbyist which of the lobbyists' current client listings remain active.

Recommendation 13:

For greater certainty, the Committee recommends that the 30-day period should be removed from the Act *only* insofar as it applies to the obligation to deregister. Because timely updating of client information is important, the Committee recommends that provisions that require the lobbyist to provide notification within 30 days of any changes to existing filings should remain in the Act.

Recommendation 14:

The Committee is satisfied that the current penalty regime prescribed by the Act is appropriate and does not recommend any changes in this regard.

Recommendation 15:

The Committee is of the view that the creation of a dual-disclosure i.e. a system that would require public office holders to report having been contacted by a lobbyist, would result in significantly increased compliance cost with little, if any, improvement in transparency; for that reason, the Committee does not recommend that the Act be amended to create a dual-disclosure system.

Recommendation 16:

The Committee does not recommend that the Act be amended in order to create a requirement that the names of individuals who have been lobbied be disclosed in the lobbyists registry.

Recommendation 17:

The Committee is satisfied that the current disclosure requirements for In-House (Organization) lobbyists is sufficient and, for that reason, does not recommend any changes to the current disclosure requirements in this respect.

Recommendation 18:

Although the evidence presented to the Committee was mixed, it is possible that requiring lobbyists to disclose the amounts that they spend on lobbying campaigns could lead to greater transparency. For that reason, the Committee recommends that the proposal be made the subject of further study by the Department in consultation with stakeholders.

Recommendation 19:

The Committee is satisfied that the current disclosure requirements are satisfactory and, for that reason, does not recommend that the Act be amended in order to require that lobbyists disclose their fees.

Recommendation 20:

The Committee is of the view that the current disclosure requirements are appropriate and adequate and, for that reason, does not recommend that the Act be amended with respect to contingency fees.

Recommendation 21:

The Committee does not view the issue of the tax deductibility of lobbying expenses to be within its current mandate and, for that reason, makes no recommendation on the issue.

Recommendation 22:

The Committee is of the view that, while the requirement to disclose a client's identity could, in rare, cause can see some hardship to a litigant in a court proceeding, maintaining the integrity of the lobbyists registry is a more pressing policy objective and, on that basis, the Committee does not propose to amend the Act to create an

exception based on solicitor-client privilege to the general registration requirements.

Recommendation 23:

The Committee recommends that the role of private sector consultants in developing government policy is a subject that Parliament should study further, with a view to promoting transparency and ensuring that conflicts of interest do not arise.

Recommendation 24:

The Committee recommends that the Department of Industry, in consultation with other departments of government, devote the necessary resources and proceed with all deliberateness to design and implement an Internet architecture, to be incorporated into the Government of Canada website (http://www.canada.gc.ca), and to include the following features:

- **An easy-to-find "Consultations" portal to take visitors to a central registry containing information about all consultations currently going on in the government, with links to the departments undertaking the consultations;**
- **Additional links to background information prepared or received by government in relation to a consultation;**
- **Links to persons or departments to contact and where to send submissions;**
- **Information about which consultations are open and which have just closed; and, for those that have closed and for which the government has rendered a decision, a summary of who appeared, what was said, what the government's decision was and the reasons for it;**
- **An E-mail notice subscription list to permit Canadians to be informed of upcoming consultations on subjects of concern to them;**
- **A "contact your MP" button to permit Canadians to copy their MPs with their submissions to government.**

Recommendation 25:

As well, once the consultations portal is available, the Committee recommends that the government undertake to advertise and publicize the site in order to make Canadians aware of its existence and of the opportunity to become involved in the public policy-making process.

▶ Next

APPENDIX A

LIST OF WITNESSES

Associations and Individuals	Date	Meeting
Department of Industry	2001/03/20	5
Howard Wilson, Ethics Counsellor		
Diane Champagne-Paul, Registrar, Lobbyists Registration Branch		
Canadian Manufacturers and Exporters	2001/03/27	7
Jayson Myers, Senior Vice-President and Chief Economist		
Democracy Watch	2001/03/27	8
Duff Conacher, Coordinator		
Aaron Freeman, Board Member		
Grainger and Associates		
Brian Grainger		
Government Relations Institute of Canada	2001/04/05	12
Tony Stikeman, President		
Ian Faris, Director, Government Affairs, AT&T Canada		
GPC International		

John Scott, Vice-President and General Council		
Carole Presseault, Health Policy Manager, Canadian Nurses Association		
Alternatives North	2001/04/24	14
Suzette Montreuil, Coordinator		
	2001/04/24	14
ARC Publications		
John Chenier, Editor and Publisher		
Sean Moore, Public Policy and Public Affairs Advisor, Gowling Lafleur Henderson		
Bell Canada	2001/04/26	15
Linda Gervais, Vice-President		
Grey, Clark, Shih and Associates Limited		
Peter Clark, President		
Hillwatch Inc.		
Scott Proudfoot, Co-Chair		
Michael Teeter, Co-Chair		
"Pierre Morin Conseils Limitée"		
Pierre Morin, President		
Canadian Society of Association Executives	2001/05/01	18

Michael Anderson, President and Chief Executive Officer		
Bob Hamp, Manager, Communications		
Department of Industry	2001/05/03	19
Diane Champagne-Paul, Registrar, Lobbyists Registration Branch		
Department of Justice	2001/05/03	19
Irving Miller, Senior Counsel, Commercial Law Division		
Canadian Bar Association	2001/05/08	21
Simon Potter, Second Vice-President		
Tamra Thomson, Director		

▶ Next

Francais • Table of Contents

Previous ◀ ▶ Next

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report within one hundred and fifty (150) days.

A copy of the relevant Minutes of Proceedings of the Standing Committee on Industry, Science and Technology (*Meetings Nos. 5, 7, 8, 12, 14, 15, 18, 19 and 21 which includes this report*) is tabled.

Respectfully submitted,

Susan Whelan, M.P.
Essex

Chair

▶ Next

BLOC QUÉBÉCOIS DISSENTING OPINION

The *Lobbyists Registration Act* is one component of the measures used to make the public policy process more transparent. The Bloc Québécois has studied every aspect of lobbyists' work and each section of the Act from this perspective; it has listened to all the witnesses, always bearing in mind the importance of transparency for reassuring the citizenry that public policy decisions and the awarding of contracts reflect their interests as a whole and not those of powerful lobbies.

Despite some promising recommendations, the Bloc Québécois had no option but to voice its dissent to the Liberal majority's report, because it is much too timid when it comes to regulating lobbyists' activities. In addition, it says nothing about certain important aspects of the Ethics Counsellor's work.

1. Role of the Ethics Counsellor

The Committee refused to make recommendations about the process of appointing the Ethics Counsellor or about the different roles the Counsellor plays within the government. In the eyes of the Bloc Québécois, this is fundamental.

The recent Grand-Mère Golf Course affair ? in which the Prime Minister may have been in conflict of interest when he approached the President of the BDBC about a loan for the Auberge Grand-Mère, next door to the golf course ? made the spotlight on the Ethics Counsellor's role brighter than ever.

The affair effectively demonstrated to the public at large that the Ethics Counsellor (responsible for application of the Code for Public Office Holders as well as the *Lobbyists Code of Conduct*) is not independent and does not have the teeth that the public was entitled to expect. The majority report goes so far as to say that nothing prevents the Prime Minister from "appoint[ing] an Ethics Counsellor to advise his government. In fact, any party is free to do the same."

That second sentence is clear proof of the Liberals are confusing two concepts as separate and distinct as the internal management of a political party and the administration of public funds. They refer to the Ethics Counsellor as though he were a POLITICAL adviser to the Prime Minister and the government.

And yet it is logical that an ethics counsellor would have a mandate to carry out public inquires into conflicts of interest and ethical shortcomings on the part of holders of public office, with a view to informing the citizenry about them. Unlike the Liberals, the Bloc Québécois does not regard ethics, transparency, and public confidence in democratic institutions and the management of public affairs, as the private concerns of a political party, a government or a Prime Minister. Rather, they are the responsibility of democratic institutions ? the House of Commons ? and the elected representatives of the people.

According to Sean Moore, a public policy and public affairs adviser who was a witness to the Committee's hearings:

> I don't think it's credible any more to have an ethics counsellor with the terms of reference such as exist at the federal level in Ottawa right now. I don't think off Parliament Hill, and certainly for at least half of Parliament Hill, that's a credible option any more. (...) Well, I think the political cost to pay for not having some office to look independently at things is probably much greater than any government should have to

bear in the future.

In an effort to restore the credibility of the Ethics Counsellor's position, **the Bloc Québécois recommends that the Ethics Counsellor be appointed by Parliament for a five-year term, that the Governor in Council not be empowered to repeal this appointment except on an address by the House of Commons, and that the term be renewable for no more than one further five-year period.**

Obviously, a perfectly independent ethics counsellor who **must report to Parliament must necessarily hold public inquiries and report on both his investigations, his conclusions and the reasons underlying those conclusions, to the House of Commons.**

In this perspective, the Bloc Québécois scarcely finds reassuring the recommendation in the majority report calling for the creation of a "new office" responsible for investigating alleged violations of the Lobbyists Code, which would report to Parliament. As the report notes, "The Act does not prescribe penalties for breach of the Lobbyists Code; neither does it specify how Parliament is to respond to a reported breach of the Code."

In short, this "new office" would not be able to impose any penalties. It is as though, having concluded his investigation, Columbo could not arrest the suspect! That is why **the Bloc Québécois recommends that the Lobbyists Code be made a statutory instrument, so that breaches of it could be pursued before the courts, as is the case for multitude of other professions.**

2. Still plenty of work to do

In this report, the Bloc Québécois suggests a number of approaches that would make it possible to improve the *Lobbyists Registration Act* and would be likely to increase public confidence in the public policy process. Unfortunately, the Liberal majority did not see fit to adopt any of these recommendations. In other cases, the Committee preferred to procrastinate by calling for more in-depth consideration of certain issues role, rather than taking action now.

1. **The Bloc Québécois recommends that lobbyists be required to disclose their meetings with a minister or senior public servants, in addition to disclosing the name of the department concerned.**

2. **The Bloc Québécois recommends that lobbyists be required to disclose the amounts spent on lobbying campaigns.**

3. **The Bloc Québécois recommends that both consultant and paid lobbyists be required to disclose their fees.**

4. **The Bloc Québécois recommends that a provision be included explicitly banning any form of contingency fee for any activity whatsoever.**

5. **The Bloc Québécois recommends that consultant and paid lobbyists both be required to disclose all positions occupied and all corresponding periods of employment with any federal body or any political party; all unpaid executive positions with any political party; the number of hours of volunteer work (in excess of 40 per annum) done on behalf of any political party, any would-be candidate or any riding association; any terms of office as an elected representative at the federal level, as well as any unsuccessful election campaigns**

fought; and all contributions to any political party or candidate.

6. **The Bloc Québécois recommends that the *Code for Public Office Holders* be made a statutory instrument, and that the Code be revised by a committee of the House of Commons to safeguard against abuses. For example, the post-employment cooling-off period for holders of public office, discussed by the Committee, would become subject to penalty in the event of violation.**

Conclusion

Although the current study was not designed to cover this issue, the Bloc Québécois cannot conclude its dissenting opinion without referring to the secondary role reserved for Members of Parliament in the establishment of public policy. Many witnesses affirmed that lobbyists' time and attention is essentially directed towards the bureaucracy and the executive branch. Here is what one witness told the Committee about legislative issues:

> [MPs] are usually much farther down the list of people you need to deal with, because the genesis of legislation in this country usually is two or three years prior to the date it hits the floor of the House of Commons. (Sean Moore)

However, the Bloc Québécois knows that the citizenry would be the winners in a system where their elected representatives had more power, because it is the Members of Paniament who have direct contact with the people and are the most likely to speak for them. The Bloc Québécois hopes the government will recognize the importance of parliamentarians, and the essential contribution they make, to the public policy process.

▶ Next

MINUTES OF PROCEEDINGS

Thursday, May 31, 2001

(*Meeting No. 29*)

The Standing Committee on Industry, Science and Technology met at 9:05 a.m. this day, in Room 209, West Block, the Chair, Susan Whelan, presiding.

Members of the Committee present: Reg Alcock, Mauril Bélanger, Pierre Brien, Bev Desjarlais, Walt Lastewka, Charlie Penson, James Rajotte and Susan Whelan.

Acting Members present: Denis Mills for Dan McTeague, Joe Fontana for Andy Savoy and Raymond Lavigne for John Cannis.

In attendance: *From the Library of Parliament*: Geoffrey P. Kieley and Dan Shaw, Research Officers.

Witnesses: *From the National Research Council of Canada*: Arthur J. Carty, President. *From the Vancouver City Savings Credit Union*: David Mowat, Chief Executive Officer. *From the Conference Board of Canada*: Brian Guthrie, Director, Innovation and Knowledge Management. *From the Canadian Medical Discoveries Fund Inc.*: Calvin Stiller, Chair and Chief Executive Officer. *From the Department of Industry*: Gwillym Allen, Assistant Deputy Commissioner of Competition Economic Policy and Enforcement, Competition Bureau. *From the University of Toronto*: Nancy Gallini, Professor of Economics , Department of Economics. *From the Canadian Association of University Teachers*: Paul Jones, Research and Education Officer.

Pursuant to Standing Order 108(2), consideration of the Science and Technology Policies:

At 9:05 a.m., the Committee proceeded to the following Roundtable: **Research and Development Spin-off Firms and Finance Issues.**

Arthur J. Carty, David Mowat, Brian Guthrie and Calvin Stiller each made an opening statement and answered questions.

At 10:45 a.m., the sitting was suspended.

At 10:58 a.m., the sitting resumed.

Pursuant to Standing Order 108(2), consideration of the Science and Technology Policies:

At 10:58a.m., the Committee proceeded to the following Roundtable: **Intellectual Property Rights and Protection.**

Gwillym Allen, Nancy Gallini and Paul Jones each made an opening statement and, answered questions.

At 12:05 p.m., the sitting was suspended.

At 12:10 p.m., the sitting resumed.

Pursuant to Standing Order 108(2), the Committee proceeded to the Statutory Review of the *Lobbyists Registration Act*.

It was agreed, — That the Draft Report (as amended) be concurred in.

It was agreed, — That the Chair present the Third Report (as amended) to the House at the earliest possible opportunity.

It was agreed, — That pursuant to Standing Order 109, the Committee request that the Government table a comprehensive response to this report within one hundred fifty (150) days.

It was agreed, — That the Chair be authorized to make such typographical and editorial changes as may be necessary without changing the substance of the Draft Report to the House.

It was agreed, — That 1550 copies of the Report be printed in both English and French in tumble format.

It was agreed, — That the Committee authorize the printing of dissenting opinions as an appendix to this report, immediately following the signature of the Chair.

It was agreed, — That any dissenting opinions be limited to not more than 5 pages.

It was agreed, — That any dissenting opinions be received by the Clerk in both official languages no later than in the morning of Tuesday, June 5, 2001.

It was agreed, — That a News Release be issued.

At 1:05 p.m., the Committee adjourned to the call of the Chair.

Normand Radford
Clerk of the Committee

Previous 4